

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 382

FRANK J. PATE, WARDEN, PETITIONER,

vs.

THEODORE ROBINSON.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Northern District of Illinois		
Motion and petition for writ of habeas corpus in forma pauperis	2	1
Motion for writ of habeas corpus	4	2
Petition for writ of habeas corpus	12	5
Order granting leave to file petition for writ of habeas corpus	43	14
Order dismissing petition for habeas corpus be- cause of failure to exhaust state remedies	44	14
Order directing Attorney General to furnish record of state court proceedings for purpose of passing on motion of relator to reinstate his petition	48	15
Order vacating and setting aside prior order denying a writ of habeas corpus, reinstating petition for writ of habeas corpus and denying petition for writ of habeas corpus	51	15

RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 15, 1965

	Original	Print
Record from the United States District Court for the Northern District of Illinois—Continued		
Order of May 27, 1963 reinstating petition, etc.	52	16
Certificate of probable cause	66	17
Order granting petitioner leave to proceed in forma pauperis, etc.	67	17
Record from the Criminal Court of Cook County, State of Illinois, in The People of the State of Illinois v. Theodore Robinson	1	18
Indictment	4	18
Order appointing counsel	7	21
Plea of not guilty	16	21
Common law record and finding of guilty and sentence	21	22
Motion for transcript under Illinois Rule 65-1 ...	29	25
Tender and approval of bill of exceptions	47	27
Reporter's certificate of compliance	48	27
Writ of error from Supreme Court of Illinois ...	50	28
Bill of exceptions	52	29
Appearances	52	29
Colloquy between Court and counsel	53	29
Testimony of Mattie Mae Goldens—		
direct	58	33
cross	63	36
Neddie Batts—		
direct	65	38
cross	79	47
redirect	97	57
recross	97	58
Jim Paul Hackman—		
direct	101	60
cross	112	67
redirect	129	77
Clarence Starr—		
direct	132	79
Louis Kerfman—		
direct	143	86
cross	146	88

Record from the Criminal Court of Cook County, State of Illinois, in The People of the State of Illinois v. Theodore Robinson—Continued		
Bill of exceptions—continued		
Testimony of Robert Breckenridge—		
direct	153	92
cross	166	101
direct	175	106
cross	178	108
Kasmir Simons—		
direct	182	110
cross	196	119
Frank Edwards—		
direct	199	121
Stipulation as to People's Exhibits 1 thru 8 ...	201	122
Stipulation as to Defendant's Exhibit No. 3 ...	205	125
Colloquy between Court and counsel	207	125
Testimony of Willie Ceola Peterson—		
direct	215	130
cross	228	138
Alicia Moore—		
direct	230	139
cross	236	142
William Henry Langham—		
direct	237	143
Colloquy between Court and counsel	242	146
Stipulation as to testimony of Theodore Davis ..	244	148
Testimony of Helen Calhoun—		
direct	246	149
Stipulations as to testimony of Maxine Butler and Dr. William H. Haines	261	158
Argument of Mr. McDermid	267	162
Argument of Mr. Carey	271	164
Finding of guilt and sentence	273	165
Motion for new trial and in arrest of judgment and denial thereof	275	166
Colloquy between Court and counsel	275	166
Reporter's certificate (omitted in printing) ...	278	167
Judge's certificate to bill of exceptions	279	168
Clerk's certificate (omitted in printing)	280	168

	Original	Print
Proceedings in the United States Court of Appeals for the Seventh Circuit	281	169
Opinion, Kiley, J.	281	169
Opinion, Schnackenberg, J. (specially concurring)	292	180
Opinion, Knoch, J. (dissenting)	292	181
Judgment	294	182
Clerk's certificate (omitted in printing)	296	182
Order allowing certiorari	297	183

[fol. 2]

No.

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

PEOPLE OF THE UNITED STATES, ex rel.:
THEODORE ROBINSON, Petitioner,

—vs.—

FRANK J. PATE, Warden, Illinois State Penetentiary,
P. O. Box 1112, Joliet, Illinois, Respondent.

MOTION AND PETITION FOR WRIT OF HABEAS CORPUS IN *Forma
Pauperis* BY THE FEDERAL HABEAS CORPUS ACT—Filed
April 13, 1962

To:

Hon. Roy H. Johnson, Clerk, United States Court House,
R. 601, 225 South Clark Street, Chicago (4), Illinois.

From:

Theodore Robinson, Petitioner and Attorney Pro se,
Reg. No. 44882—Box 1112, Joliet, Illinois.

[File endorsement omitted]

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

PROOF OF SERVICE

Theodore Robinson, after being duly sworn on his oath,
deposes and says, that he placed in the hands of Prison

Officials on the day of October, A.D., 1961, a carbon MOTION AND PETITION FOR WRIT OF HABEAS CORPUS *in Forma* copy of his petition for writ of habeas corpus attached hereto; and that he instructed them to mail said copy, without delay, to the Honorable William G. Clark, Attorney General for the State of Illinois at his Office in Springfield, Illinois, in order that he may file his appearance for the Respondent in the above-captioned cause.

Theodore Robinson, Pro se.

Subscribed and sworn to before me on this 3 day of November, A.D., 1961.

Edwin J. Meyer, Notary Public.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Habeas Corpus No.

PEOPLE OF THE UNITED STATES, ex rel.:
THEODORE ROBINSON, Petitioner,

—vs.—

FRANK J. PATE, Warden, Respondent.

MOTION FOR WRIT OF HABEAS CORPUS—Filed April 13, 1962

Comes Now the Petitioner Herein, Theodore Robinson, and respectfully moves this Honorable Court to issue a writ of habeas corpus in the above-entitled cause and that the Court appoint Counsel to represent him in these proceedings.

In support of said motion the petitioner submits the following facts and representations, to wit:

1st. That he is a citizen of the United States of America; that he is imprisoned within the jurisdiction of this Honorable Court, in the State of Illinois, by the respondent aforesaid, and by a process that he verily believes to be *Null* and *Void*, and lawfully legal as for naught.

2nd. That he is informed and verily believes that he has a meritorious cause for action towards the protection and safeguarding of his legal and constitutional rights; that therefore petitioner earnestly prays that this Honorable Court will receive, file and docket, and assign for hearing and disposition his Motion and Petition for a writ of habeas corpus.

3rd. That due to his indigence, petitioner is unable to retain competent counsel to represent him during the course of these proceedings, and that he fears that he will be unable to properly protect himself in this cause of action without the aid of competent counsel.

4th. That he is unable to pay the casts of these proceedings or give surety for the same, wherefore he again prays the Court will permit him to proceed as a poor person, without payment of costs, pursuant to an act made and provided for such cases, to wit: 28 U.S.C.A. 1915.

5th. That petitioner further shows and represents to this Honorable Court that he is not committed or detained by the virtue of any other process, judgment or execution issued by any other court or judge of the United States, in which such court or judge has exclusive jurisdiction, nor by virtue of a final judgment for any treason, felony or any other crime committed in other state or territory.

[fol. 5] Petitioner brings this action in accordance with the provisions of the Habeas Corpus Act that provides that a person may be discharged on Habeas Corpus for the viola-

tion of constitutional rights guaranteed by the United States Constitution, and he hereby invokes the provisions in the new Federal Judicial Code, Title 28 U.S.C.A. under Chapter 153, titled Habeas Corpus and the pertinent sections thereunder, viz., Sections 2241, 2242, 2243, 2246, 2247, 2248, 2249 and particularly 2254, which states, to wit:

State Custody: Remedies in State Courts.—“An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process *or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.* (Emphasis supplied.)

Wherefore, it is respectfully prayed that the Court accept this cause of action; that the above motion be granted, and that the petitioner be brought in person into the United States District Court at Chicago, Illinois, for a hearing on his motion and on the Petition attached.

Respectfully submitted,

Theodore Robinson, Pro se.

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

PAUPER'S OATH

Now comes Theodore Robinson, and after first being duly sworn upon his oath, deposes and says, that he owns no real or personal property and has no money or income from

any source whatsoever with which to pay the costs of these proceedings; that he is a citizen of the United States of America and verily believes that he has a meritorious cause of action; that he fully qualifies as a poor person within the meaning of the statute 28 U.S.C.A. 1915 made and provided.

Further Affiant Sayeth Not.

Theodore Robinson, Affiant.

State of Illinois)
County of Will) ss.

Subscribed and sworn to before me on this 3 day of November, A.D., 1961.

Edwin J. Meyer, Notary Public.

[fol. 12]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Habeas Corpus No.

PEOPLE OF THE UNITED STATES, ex rel.:
THEODORE ROBINSON, Petitioner,

—vs.—

FRANK J. PATE, Warden, Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

May It Please the Court:

Comes now the petitioner, Theodore Robinson, and respectfully represents unto this Honorable Court that he is being illegally and unlawfully detained, restrained, and otherwise deprived of his liberty and freedom, by the aforesaid respondent, in the Illinois State Penitentiary, (State-

ville-Branch); and that the aforesaid respondent purports to hold, detain, and restrain petitioner under and by a certain judgment, sentence, and mittimus, contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; that said mittimus resulted from a proceeding held in the State of Illinois in the Criminal Court of Cook County following the entry of final judgment on the sixteenth day of September, A.D., 1959, in Cause Gen. No. 59-793, entitled People of the State of Illinois, Plaintiff —vs.— Theodore Robinson, Defendant.

And your petitioner complaining further shows and respectfully raises the following points in support of his contention that he is being illegally detained and deprived of his liberty contrary to the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and therefore entitled to his lawful discharge by the Federal Habeas Corpus Act:

[fol. 13]

Statement on Exhaustion of State Remedies

The Illinois Supreme Court entered judgment in cause Docket Number 35763 (*People State of Illinois, defendant in error, vs. Theodore Robinson, plaintiff in error*). The court below's Opinion has been officially recorded under vol. no. 22 Ill. 2d 150. However, a printed copy of said Opinion rendered in the aforesaid cause is attached and marked APPENDIX "A".

Application for writ of certiorari—Robinson v. Illinois,—docketed June 26th, as No. 251 Miscellaneous, was denied in the October Term, 1961.

Jurisdictional Statement

The jurisdiction of this Honorable Court is invoked under *Part V, Rule 19 (a)* "... Where a state court has decided a federal question of substance ... in a way probably not in accord with applicable decisions of this Court."

The judgment sought to be reviewed was entered on May 19, 1961, in proceedings under Illinois Supreme Court Rule 65-1, pertaining to appeals on writ of error for indigent defendants.

Statutory Provision on This Court's Jurisdiction: The jurisdiction of this Court is further invoked under 28 U.S.C.A. Section 1257 (3).

Questions Presented for Review

1) Whether trial court's failure to summon jury to determine the issue of defendant's sanity—when the prosecuting attorney himself evidenced doubt of defendant's sanity and suggested that a psychiatrist be called to testify concerning his sanity—was a denial of adequate opportunity to the indigent defendant to sustain his defense of *not guilty of murder by reason of* [fol. 14] *insanity* at the time of the commission of the crime?

2) Whether refusal of the trial court to permit defendant to subpoena witnesses was a denial of due process of law?

Constitutional Provision Involved

Section 1 of the Fourteenth Amendment of the United States Constitution. "... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

State Statutory Provisions Involved

Chapter 38, Section 592, Illinois Revised Statutes (1959).

"A lunatic or insane person, without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged: Provided, the act so charged shall have been committed in the condition of

insanity. If upon the trial it shall appear from the evidence that the act was committed as charged, but at the time of committing the same, the person so charged was lunatic or insane, the JURY SHALL so find by their verdict . . . ”

Chapter 38, Section 593, Illinois Revised Statutes (1959).

“ . . . In all of these cases, it shall be the DUTY OF THE COURT TO IMPANEL A JURY TO TRY THE QUESTION WHETHER THE ACCUSED BE, AT THE TIME OF IMPANELING, INSANE OR LUNATIC.”

Chapter 38, Section 735, Illinois Revised Statutes (1959).

“It shall be the duty of the clerk of the court to issue subpoenas, either on the part of the people or of the accused . . . ”

[fol. 15] Statement of the Case

The petitioner Theodore Robinson, 31 years of age, was indicted by a Cook County Grand Jury in Illinois. The indictment contained two counts. Count 1 of the indictment charged that Theodore Robinson late of Cook County on the 28th day of February, 1959, in the said County of Cook shot and killed one Flossie May Ward. (Tr. No. 59-793, p. 4)

The petitioner pleaded not guilty to the indictment by reason of insanity after court-appointed counsel was selected to represent him. (Tr. pp. 7-8)

On September 15, 1959, the petitioner waived trial by jury, submitted the cause to the court for trial and was tried and found guilty of the crime of murder in manner and form as charged in the indictment and sentenced to a term of his natural life in the Illinois State Penitentiary. (Tr. pp. 21-22)

At the Trial

Testimony on behalf of the State revealed that the petitioner, Theodore Robinson, had been Flossie Mae Ward's boy friend for about four years and that recently he and Flossie had started living together as husband and wife. (Tr. p. 58)

For four months, Flossie had been employed at a barbecue house located at 1035 E. 63rd Street, Chicago. She and two other persons—Jim Hackman and Neddie Batts worked the second shift (8:00 P.M. to about 4:00 A.M.); the first two hours of each evening being spent in back room preparation of foods they were to serve. (Tr. pp. 81-82) The restaurant was a rather small one, about 25 x 25 having somewhat of a semi-circular counter (or L shaped counter) with stools along the counter at the side, and at the back of the counter there was a gate. Behind the counter, near the front, there was a deep fry and along [fol. 16] the wall there was an ice box, all leaving a three foot passageway. (Tr. p. 67)

Neddie Batts had been working there about one month as a waitress and Jim Hackman had been working there for four years. (Tr. pp. 73, 102) The petitioner usually went into the restaurant about 1:00 P.M. to have his dinner about three or four times a week and would return around 4:00 A.M. or 5:00 A.M. to take Flossie home, and he was known to both Neddie and Hackman. (Tr. p. 73)

According to Neddie, about 4:00 A.M. one week before the shooting, the petitioner had called for Flossie and was to take her and Neddie home. A man (later identified as Flossie's legal husband) had unexpectedly appeared on the scene demanding that Flossie accompany him home. There was an argument between them and the petitioner had asked Neddie to *call the police*. (Tr. pp. 97, 98)

On the 28th day of February, 1959 at about 10:30 P.M. according to this witness, the petitioner rushed in the restaurant, wearing a dark top coat and a brown hat, jumped over the counter and Flossie said "Don't start nothing to-

night," and the petitioner said nothing. Then Neddie testified that she heard shots. Flossie jumped over the counter and the petitioner again jumped over the counter. The witness Neddie saw nothing further because she ran to the basement. (Tr. pp. 91-94)

Jim Paul Hackman testified that on the night in question, the petitioner came into the restaurant about 10:30 and stopped at the front of the counter where Hackman and Flossie were standing side by side, at which time Hackman saw a gun in the petitioner's hand. (Tr. pp. 107-108)

According to Hackman when the petitioner entered the restaurant with the gun in his hand, Flossie who was closest to him, look up and said "Don't start anything tonight, Ted," and went back to what she was doing (fixing orders). The petitioner went to the back of the counter (away from Flossie), jumped over the counter, rushed up toward [fol. 17] Flossie and began to shoot (Tr. pp. 107-108). Hackman admitted on cross examination that he did not watch the petitioner all the time (Tr. p. 121). On redirect examination, Hackman testified that the petitioner appeared sober.

Clarence Starr, a witness called on behalf of the People testified that one Robert Moore who lives in the same apartment building where Starr lives at 1409 North Wolcott, came to his apartment and told him that there was the petitioner there who was suspected of murder. Starr then called for help and one officer Kerfman and another officer answered the call; that Starr met the officers on the first floor of the building and then proceeded to the 13th floor, approached apartment 1307 where the Moores lived and ascertained that the petitioner had left. They arrested a man who was in the hall just about 20 feet away from the Moore's apartment who answered the description of Theodore Robinson (the petitioner). (Tr. pp. 135-136) As the officers approached the petitioner he turned around and looked at them, making no attempt to flee.

Starr further testified that he, Officer Creed and Officer Williams, about an hour and a half later returned to the Moore's apartment and obtained a navy blue regular length overcoat having a gun wrapped in a handkerchief in the inside pocket, and also a hat. He testified that the petitioner admitted that the clothes were his while he was in the car outside the apartment building. (Tr. p. 140)

Officer Kerfman who testified on behalf of the People stated that he assisted in the arrest, but never heard any conversation concerning the coat and the hat and the gun. He stated that, "We arrested the defendant, took him to 27th District Station" and that when the overcoat was procured and in his words "We placed him under arrest and took him to the 27th District Station." (Tr. p. 144)

Officer Robert Breckenridge, a witness called on behalf of the People testified that he and another officer from the 7th District had occasion to investigate the crime and that [fol. 18] when he arrived at 1035 E. 63rd Street he observed two persons lying on the sidewalk, one male and one female. The female was later identified as Flossie Mae Ward, that the two persons were taken to Woodlawn Hospital. (Tr. p. 154)

After the State rested its case, the defense called Willie Ceola Peterson, the petitioner's mother, (Tr. p. 215), Helen Calhoun, the petitioner's aunt (Tr. p. 246), William Henry Langham, the petitioner's grandfather (Tr. p. 237) and Alice Moore (Tr. p. 231). They all testified that based on their observation of the defendant "he is insane" and doesn't know the difference between right and wrong.

The mother of the petitioner once in 1958 and again in 1959 (just prior to the death of Flossie Ward) had warrants issued for the petitioner in an attempt to have him returned to a mental hospital, but the warrants were never served. The petitioner had upon one occasion beat up her brother-in-law and was generally fighting in the streets and people were beating him up. (Tr. pp. 226-227)

The petitioner's grandfather, Lingham, had seen the petitioner a few days prior to the death of Flossie and he

testified that the petitioner was "giddy", laughed too much, and that he believes him to be partially insane at all times. (Tr. pp. 240-241)

On behalf of the petitioner it was brought out at the trial that as a child he was a kind and affectionate child, but at the age of seven a girl dropped a brick on his head from the third floor causing the petitioner to become cross eyed, and since that time his behavior had been unusual. (Tr. p. 216) However, the petitioner went to the army and in 1945, upon one occasion when home on furlough, for no reason he kicked a hole in a small bar which his mother had in the house. (Tr. p. 218). There was no liquor on the bar. Since he has returned from the service he keeps a glare in his eyes and seems lost in a deep study most of the time and complains of constant headaches. (Tr. p. 219). [fol. 19] In 1951 the petitioner lost his mind and had to be hospitalized at Kankakee, a State mental hospital. He had delusions that someone was going to shoot him and was foaming at the mouth. (Tr. p. 220) Prior to this, the petitioner had married and his wife had a baby.

About a year after the petitioner was out of the mental hospital, he separated from his wife. The petitioner took his baby over to his aunt's. While the aunt was at work, the petitioner shot and killed the baby and shot himself in the head. (Tr. pp. 223-224)

The petitioner was apprehended when he wandered into a police station and gave himself up. (Tr. p. 224) Just before the trial for killing his child, the petitioner was restored to sanity in the Cook County Criminal Courts Building. (Tr. p. 265). He was convicted and sentenced to the Joliet State Penitentiary for killing his child and was released from Joliet in 1956. And it was in 1958 and again in 1959, just prior to Flossie's death, that the petitioner's mother had had warrants issued for his arrest.

The state offered no evidence as to the sanity of the petitioner. It was stipulated by the State and the Defense that if one Dr. Haines, a psychiatrist were to testify, he would testify "that the defendant knows the nature of the

charge pending against him and is able to cooperate with his counsel in the defense of those charges." (Tr. p. 266)

The Court's attention was called to the fact that the petitioner had previously been committed at Kankakee. (Tr. p. 10)

The prosecuting attorney stated to the court that "Your Honor . . . now the defense raised here is such that I think we should call Dr. Haines to have his testimony as to the opinion whether this man is sane or insane . . . It is possible that he might be insane and know the nature of the charges against him and be able to cooperate with his counsel."

To the prosecuting attorney's remark, the court replied [fol. 20] "I think you have enough in the record now." (Tr. pp. 266-268)

During the trial the petitioner requested certain witnesses be subpoenaed and the Court denied him this right (Tr. pp. 208-212). The petitioner asked the court to subpoena Mr. and Mrs. Fred Moore in whose apartment a coat (containing the gun) allegedly belonging to the petitioner was found. (Tr. p. 213). The court told the petitioner that unless the defendant knew what the Moore's could testify to, the court couldn't allow the subpoena (Tr. pp. 213-214) and whether or not the coat was defendant's, defendant killed the woman and that it didn't make any difference whether the clothes belonged to defendant or not. (Tr. p. 275).

The petitioner also requested that a Dr. Keller of the Chicago Psychiatric Institute be produced to testify at his trial. (Tr. p. 52) And Dr. Keller was not summoned into court to testify—although the court ordered that a petition for a *capias* be prepared. (Tr. pp. 53-54)

The petitioner was found guilty in manner and form as charged and sentenced to the penitentiary for a term of his natural life. (Tr. p. 273)

[fol. 43]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO FILE PETITION FOR WRIT OF
HABEAS CORPUS IN FORMA PAUPERIS—April 13, 1962

Leave to file petition for writ of habeas corpus in forma pauperis.

4/17/62 Mailed notices to Petitioner; Warden Pate, and
Atty. General Clark sw.

[File endorsement omitted]

[fol. 44]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title omitted]

ORDER DISMISSING PETITION FOR HABEAS CORPUS BECAUSE OF
FAILURE TO EXHAUST STATE REMEDIES—April 18, 1962

“Order dismissing Petition for habeas corpus because of failure of relator to exhaust his state court remedies.”

[File endorsement omitted]

[fol. 48]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Present: Honorable Julius J. Hoffman, District Judge.

[Title omitted]

ORDER DIRECTING ATTORNEY GENERAL TO FURNISH RECORD
OF STATE COURT PROCEEDINGS FOR PURPOSE OF PASSING
ON MOTION OF RELATOR TO REINSTATE HIS PETITION—
May 1, 1963

It Is Ordered by the Court that the respondent, through the Attorney General of Illinois, furnish to the Court a transcript of the record of proceedings in the State Court for the purpose of passing on the motion of the relator to reinstate his petition, such transcript to be delivered to the Court on or before May 15, 1963.

[fol. 50] Received, U. S. Marshal, 1963 May—6 PM 4:40,
N. Dist. of Ill.

[File endorsement omitted]

[fol. 51]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Present: Honorable Julius J. Hoffman, District Judge.

[Title omitted]

ORDER VACATING AND SETTING ASIDE PRIOR ORDER DENYING
A WRIT OF HABEAS CORPUS, REINSTATING PETITION FOR
WRIT OF HABEAS CORPUS AND DENYING PETITION FOR WRIT
OF HABEAS CORPUS—May 27, 1963

The Court having examined the transcript of the record concerning relator in the State Court and being fully advised in the premises it is

Ordered that the order of court heretofore entered herein denying a writ of habeas corpus be and it hereby is vacated and set aside and that the petition of relator for writ of habeas corpus be and it hereby is reinstated, and it is

Further Ordered that said petition for writ of habeas corpus be and it hereby is denied. See *People vs. Robinson*, 22 Ill. 2d 162 (1961).

[fol. 52]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title omitted]

ORDER OF MAY 27, 1963 REINSTATING PETITION, ETC.

"After an examination of the transcript of record in the State Court, Order of Court heretofore entered denying writ of habeas corpus is vacated, the Petition is ordered reinstated and it is ordered that the same be and hereby is denied. See *People vs. Robinson*, 22 Ill. 2d 162 (1961)."

[File endorsement omitted]

[fol. 66]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title omitted]

CERTIFICATE OF PROBABLE CAUSE—June 12, 1963

I, Julius J. Hoffman, Judge of the United States District Court for the Northern District of Illinois, hereby certify that there is probable cause for an appeal in the above-entitled cause.

Julius J. Hoffman, United States District Judge.

Dated: June 12, 1963.

[File endorsement omitted]

[fol. 67]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Title omitted]

ORDER GRANTING PETITIONER LEAVE TO PROCEED
IN FORMA PAUPERIS, ETC.—June 12, 1963

Order leave to petitioner to proceed in forma pauperis. Order leave to petitioner to file notice of appeal in forma pauperis and Clerk is directed to prepare and transmit record on appeal to the United States Court of Appeals, Seventh Circuit, without payment of costs. Motion for Certificate of Probable Cause granted.

[File endorsement omitted]

[fol. 1]

IN THE CRIMINAL COURT OF COOK COUNTY
STATE OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

—VS.—

THEODORE ROBINSON.

[fol. 4]

INDICTMENT

State of Illinois,
County of Cook, ss.:

Of the March Term of the Criminal Court of Cook County, in said County and State, in the year of our Lord, one thousand nine hundred and fifty-nine.

Count 1.

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by authority of the People of the State of Illinois, upon their oaths present that one Theodore Robinson late of the County of Cook, on the twenty-eighth day of February in the year of our Lord one thousand nine hundred and fifty-nine in said County of Cook, in the State of Illinois aforesaid, unlawfully, feloniously, wilfully and of his malice aforethought made an assault in and upon the body of one Flossie May Ward who then and there was in the peace of the People of said State of Illinois; and that said Theodore Robinson then and there unlawfully, feloniously, wilfully and of his malice aforethought discharged and shot off, to, against, towards and upon said Flossie May Ward a certain pistol commonly called a revolver, then and there

charged with gunpowder and divers leaden bullets, which pistol said Theodore Robinson then and there had and held in his hand; and that said Theodore Robinson then and there unlawfully, feloniously, wilfully and of his malice aforethought struck, penetrated and wounded said Flossie May Ward in and upon the head and body of said Flossie May Ward with one of said leaden bullets so as aforesaid discharged and shot out of said pistol by said Theodore Robinson thereby then and there with said one leaden bullet discharged and shot out of said pistol as aforesaid giving to said Flossie May Ward in and upon the head and body of said Flossie May Ward divers mortal wounds of which said Flossie May Ward thereafter died on the same twenty-eighth day of February in the year of our Lord one thousand nine hundred and fifty-nine in said County of Cook, in the State of Illinois aforesaid; and so the Grand Jurors aforesaid, upon their oaths aforesaid, say that said Theodore Robinson unlawfully, wilfully, feloniously and of his malice aforethought killed and murdered said Flossie May Ward in manner and form aforesaid and by the means aforesaid; contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

[fol. 5] Count 2.

The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one Theodore Robinson late of the County of Cook, on the twenty-eighth day of February in the year of our Lord one thousand nine hundred and fifty-nine in said County of Cook, in the State of Illinois aforesaid, did unlawfully with malice aforethought by shooting kill and murder Flossie May Ward, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Benjamin S. Adamowski, State's Attorney.

ENDORSED

G. J. No. 124

General No. 59-793

CRIMINAL COURT OF COOK COUNTY

March Term, A. D. 1959

THE PEOPLE OF THE STATE OF ILLINOIS,

VS.

THEODORE ROBINSON.

INDICTMENT FOR MURDER

A TRUE BILL

Ralph J. Olson

Foreman of the Grand Jury

Witnesses

Robert J. McGee

Mattie Mae Golden

Neddie Betts

Robert Breckendige

Filed Mar. 12, 1959

Sidney R. Olsen, Clerk

Bail, \$ No Bail

Which said Indictment was then and there filed in the Office of the Clerk of the Criminal Court of Cook County, Illinois.

[fol. 7]

IN THE CRIMINAL COURT OF COOK COUNTY

ORDER APPOINTING COUNSEL—March 25, 1959

This day come the said People by Benjamin S. Adamowski, State's Attorney, and the said Defendant, Theodore Robinson, in his own proper person also comes.

And it appearing to the Court that the said Defendant, Theodore Robinson, is not represented by Counsel, the Court of its own motion doth appoint Attorneys Harold McDermid and Warren Carey of the Chicago Bar Association, Counsel for said Defendant in the trial of the above entitled cause.

And it appearing to the Court that the said Defendant, Theodore Robinson, is not represented by Counsel, the following proceedings were had upon Arraignment of said Defendant, Theodore Robinson, and ordered filed this day and are in words and figures following, to-wit: * * *

[fol. 16]

IN THE CRIMINAL COURT OF COOK COUNTY

PLEA OF NOT GUILTY—March 25, 1959

Whereupon the Court proceeds with the Arraignment of said Defendant, Theodore Robinson, and the said Defendant now here in open Court waives the reading of the Indictment in the above entitled cause.

And the said Defendant having been furnished with a copy of the Indictment in this cause, and lists of the names of the witnesses and Jurors, and he being now here duly arraigned in open Court and forthwith demanded of and concerning the crime alleged against him in said Indictment how he will acquit himself thereof for a plea in that behalf says, that he is Not Guilty in manner and form as charged therein and of this he puts himself upon the Country and the said People do the like.

And it is ordered by the Court that this cause be and the same is hereby assigned to the Honorable Grover C. Nie-

meyer, Judge of the Superior Court of Cook County, Illinois, and Ex-Officio Judge of the Criminal Court of Cook County, Illinois.

[fol. 21]

IN THE CRIMINAL COURT OF COOK COUNTY
COMMON LAW RECORD AND FINDING OF GUILTY AND SENTENCE

And afterwards, to-wit: on the fifteenth day of September in the year last aforesaid, it being the term of Court aforesaid, there being present Honorable Daniel A. Covelli, Judge of the Superior Court of Cook County, Illinois, and Ex-Officio Judge of the Criminal Court of Cook County, Illinois.

Benjamin S. Adamowski, State's Attorney, Frank G. Sain, Sheriff, and Sidney R. Olsen, Clerk.

The following among other proceedings were had and entered of records in said court, which said proceedings are in words and figures following to-wit:

INDICTMENT FOR MURDER

THE PEOPLE OF THE STATE OF ILLINOIS

—VS—

THEODORE ROBINSON

This day come the said People by Benjamin S. Adamowski, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Plea of Not Guilty heretofore entered to the Indictment in this cause.

And now issue being joined and the said Defendant and his Counsel now here propose to waive the intervention of a Jury and submit this cause to the Court for trial and the Court having fully advised the said Defendant of his right to a trial by Jury, said Defendant still adheres to his proposition to waive such right and by agreement between

the State's Attorney and the said Defendant and his Counsel, this cause is submitted to the Court for trial and the intervention of a Jury waived.

And the Court hearing the testimony of witnesses.

It is ordered by the Court that this cause be and the same is hereby continued until to-morrow, Wednesday, September 16th, A. D. 1959.

[fol. 22]

And afterwards, to-wit: on the sixteenth day of September in the year last aforesaid, it being the term of Court aforesaid, there being present Honorable Daniel A. Covelli, Judge of the Superior Court of Cook County, Illinois, and Ex-Officio Judge of the Criminal Court of Cook County, Illinois.

Benjamin S. Adamowski, State's Attorney, Frank G. Sain, Sheriff, and Sidney R. Olsen, Clerk.

The following among other proceedings were had and entered of records in said court, which said proceedings are in words and figures following to-wit:

INDICTMENT FOR MURDER

THE PEOPLE OF THE STATE OF ILLINOIS

—VS—

THEODORE ROBINSON

This day come the said People by Benjamin S. Adamowski, State's Attorney, and the said Defendant as well in his own proper person as by his Counsel also comes.

And the Court hearing the further testimony of witnesses.

Stipulated age of said Defendant, Theodore Robinson, is now thirty-one (31) years.

And the State's Attorney, Counsel for the People, now here rests.

And the Court hearing the further testimony of witnesses.

And Counsel for said Defendant, Theodore Robinson, now here rests.

And the Court hearing the closing arguments of Counsel and being fully advised in the premises doth find the said Defendant, Theodore Robinson, guilty of Murder in manner and form as charged in the Indictment in this cause.

And Counsel for said Defendant, Theodore Robinson, now here moves the Court for a New Trial in this cause.

And the Court hearing Counsel for said Defendant in support of said motion for a New Trial in this cause as well as the State's Attorney, Counsel for the People, in opposition thereto, and the Court being fully advised in the premises, doth overrule said motion and orders that said motion for a New Trial be and the same is hereby overruled [fol. 23] accordingly.

And Counsel for said Defendant, Theodore Robinson, now here moves the Court in Arrest of Judgment in this cause.

And the Court hearing Counsel for said Defendant in support of said motion as well as the State's Attorney, Counsel for the People, in opposition thereto, and the Court being fully advised in the premises, doth overrule said motion and orders that said motion in Arrest of Judgment be and the same is hereby overruled accordingly.

And now neither the said Defendant, Theodore Robinson, nor his Counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the Finding of guilty, heretofore entered, and the Judgment rendered to the Indictment in this cause.

Therefore, it is considered, ordered and adjudged by the Court that the said Defendant, Theodore Robinson, is guilty of the said crime of Murder in manner and form as charged in the Indictment in this cause, on the said Finding of Guilty, and that he be and is hereby sentenced to confinement at hard labor in the Illinois State Penitentiary for said crime of Murder in manner and form as charged in the Indictment whereof he stands convicted and adjudged guilty, for the term of Natural Life from and after the de-

livery of the body of said Defendant, Theodore Robinson, to the Illinois State Penitentiary, and that the said Defendant, Theodore Robinson, be taken from the bar of the Court to the Common Jail of Cook County, from whence he came and from thence by the Sheriff of Cook County to the Department of Public Safety and the said Department of Public Safety is hereby required and commanded to take the body of the said Defendant, Theodore Robinson, and confine him in said Penitentiary, in safe and secure custody, for and during the term of Natural Life from and after the delivery thereof, at hard labor, and that he be thereafter discharged.

[fol. 24] It Is Further Ordered that the said Defendant pay all the costs of these proceedings, and that execution issue therefor.

[fol. 29]

IN THE CRIMINAL COURT OF COOK COUNTY, ILLINOIS

Indictment No. 59-793

MOTION FOR TRANSCRIPT UNDER ILLINOIS RULE 65-1

AND ORDER THEREON—September 22, 1959

May It Please the Court:

Now comes Theodore Robinson, the movant in the above entitled cause of action, and respectfully present unto this Honorable Court the following, to-wit:

(1) That on the 16th day of September 1959 A.D., he was tried and convicted in a bench trial before the Hon. Daniel A. Covelli, of the Criminal Court of Cook County, wherein he was charged in Indictment No. 59-793, for the offense of murder.

(2) That he feels he was denied a fair and impartial trial by the Court—because of the fact, the Court denied him the opportunity as it was promised in open session before witnesses the right to subpoena any witnesses vital to the defense or the prosecution at the beginning of his hearing.

(3) Defendant states that he is illiterate in the profession of law, being a layman, and was kept under the opinion he was being granted a pre-trial preliminary hearing as requested. As no plea was asked nor entered, he had no reason to doubt the word and advice of his attorney.

(4) Defendant states he feels that he was ineffectively assisted by Counsel appointed him by the Court, who he feels aided the State in effect to gain his conviction.

(5) Counselor did not use the prearranged formula for defense.

(6) Counselor denied him the right to take the stand in his own defense, as requested. Defendant now charges that Counselor instructed him to go before the bench that he might be heard by the Court, whereas sentence was imposed before he had a chance to say a word or reach a respected position before the Judge.

Your Movant feels that he has a worthy cause of action to present to the Illinois Supreme Court for review of the conviction mentioned herein above. Therefore he appeals to the Court to grant him his records in this matter, so he can appeal his case in a legal form from said records. He humbly prays that his Motion for Transcript be allowed and same be entered as part of the records.

This he forever Prays.

Respectfully submitted,

Theodore Robinson.

Theodore Robinson, Reg. No. 230872 A-1, Cook County Jail, Chicago, Illinois.

[fol. 30] And the Court hearing Counsel in support of said motion and being fully advised in the premises, doth sustain said motion and orders that said motion for a Transcript of the Proceedings at the trial of said Defendant, Theodore Robinson, under the Illinois Supreme Court Rule 65-1 be and the same is hereby allowed.

[fol. 47]

IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

TENDER AND APPROVAL OF BILL OF EXCEPTIONS

This day come the said People by Benjamin S. Adamowski, State's Attorney, and the said Defendant by his Counsel also comes.

And Counsel for said Defendant, Theodore Robinson, tenders his Bill of Exceptions to the Court, which said Bill of Exceptions is signed and sealed by the Judge of this Court, and order filed this day, which is accordingly done.

Report of Compliance filed in the above entitled cause; which said Report of Compliance is in words and figures following, to-wit:

[File endorsement omitted]

[fol. 48]

IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

REPORT OF COMPLIANCE—Filed June 3, 1960

I, Lewis Y. Matsuoka, Official Shorthand Reporter of the Criminal Court of Cook County, do hereby state that on the 3rd day of June, A.D. 1960, the original Bill of Exceptions in the above-entitled cause was filed with the Clerk of this Court; that on the 3rd day of June, A.D. 1960, a copy of said Bill of Exceptions was mailed to the defendant, which was done pursuant to Rule 65-1.

Lewis Y. Matsuoka, Official Shorthand Reporter,
Criminal Court of Cook County.

[File endorsement omitted]

[fol. 50]

IN THE SUPREME COURT OF ILLINOIS

WRIT OF ERROR—September 26, 1960

State of Illinois)

Supreme Court) ss.

THE PEOPLE OF THE STATE OF ILLINOIS

*To the Clerk of the Criminal Court of Cook County**Greeting:*

Because, in the Record and proceedings, as also in the rendition of the judgment of a plea which was in the Criminal Court of Cook County (59-793) before the Judge thereof, between People State of Illinois and Theodore Robinson it is said manifest error hath intervened, to the injury of the aforesaid Theodore Robinson as we are informed by his complaint, and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the Record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Springfield, on or before twenty days from the date hereof, that the Record and proceedings, being inspected, we may cause to be done therein to correct the Error, what of right ought to be done according to law.

Witness, The Hon. Walter V. Schaefer, Chief Justice of our Court, and the Seal thereof, at Springfield, this 26th day of September, in the year of our Lord one thousand nine hundred and sixty.

(Seal)

Mrs. Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois.

[fol. 52]

IN THE CRIMINAL COURT OF COOK COUNTY

September Term, A.D. 1959.

Indictment No. 59-793.

Charge: Murder.

State of Illinois,
County of Cook, ss.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THEODORE ROBINSON

Bill of Exceptions

Be it remembered that heretofore, on to-wit the 15th day of September, A.D. 1959, the same being one of the days of the September Term of said Court, this cause came on for trial before the Honorable Daniel A. Covelli, Judge of said Court, upon the indictment heretofore filed herein, and defendant having entered a plea of not guilty.

APPEARANCES:

Hon. Benjamin S. Adamowski, State's Attorney of Cook County, By Mr. Robert M. Conley and Mr. Michael Greenfield, Assistant State's Attorneys, on behalf of the People;

Mr. Warren J. Carey and Mr. Harold E. McDermid, on behalf of the Defendant.

[File endorsement omitted]

[fol. 53] **COLLOQUY BETWEEN COURT AND COUNSEL**

The Clerk: Theodore Robinson.

Mr. McDermid: Good morning, your Honor. My name is McDermid for the record. Warren Carey is downtown and will come out when the time is proper.

The Court: Well, we will be ready for him in about an hour. You call him. It will follow the case on trial. A bench or jury?

Mr. McDermid: He discussed that matter with the defendant and I didn't find out what the result of the conference was.

The Court: Mr. Robinson, have you decided whether you want a jury or bench trial?

The Defendant: No, sir, I haven't.

The Court: All right, pass it. About 11:00 o'clock, we will go to trial.

Mr. McDermid: Could we have a call of the witnesses at this time to see if a capias would have to be issued or not? There was a subpoena duces tecum issued to Dr. Kelleher, Chicago Psychiatric Institute, and as yet we have heard no response from them. I think I will call—

The Court: Call him.

Mr. McDermid: Mr. Warren Carey asked me to prepare a petition for a capias.

[fol. 54] The Court: All right, prepare a petition for a capias.

Mr. McDermid: Thank you very much.

The Court: It will follow the case on trial, about 11:00 o'clock.

Mr. McDermid: Will I be permitted to confer with my man?

The Court: Yes.

(After an interval of time, the following proceedings were had:)

The Clerk: Theodore Robinson.

Mr. McDermid: Mr. Carey has not been here, and I believe we will be waiving the jury but I think the defendant has to decide that. However, he does want to confer once more with Warren Carey before he does that.

The Court: Very well.

Mr. McDermid: I think we will be ready to proceed at your pleasure.

The Court: We are ready right now, if you are ready. Are you ready?

Mr. McDermid: No, I would like to wait for Warren Carey.

The Court: Which case are we going to try first?

Mr. Conley: Indictment 59-793. I informed Mr. Carey [fol. 55] of our election.

The Court: 793, all right.

Mr. McDermid: If we could have a ten minute recess, I think Warren Carey will be ready, and we will be ready.

The Court: Has he left his office?

Mr. McDermid: I am sure he has because I called him.

The Court: Take the prisoner back. We will wait until the lawyer gets here.

(After a short interval of time, the following proceedings were had:)

The Court: Call the case, please.

The Clerk: Theodore Robinson.

The Court: The State has chosen to try 793. Are you ready?

Mr. Carey: Yes, Judge.

The Court: Mr. Robinson, you understand you are entitled to a trial by a jury?

The Defendant: Yes, I do.

The Court: Do you wish a jury trial?

The Defendant: No, sir.

The Court: Have him sign a waiver.

Mr. Carey: While he is signing that, Judge, a few things [fol. 56] I would like to discuss with the Court.

The Court: Yes.

Mr. Carey: Namely, records were brought up from Kankakee State Hospital and I have given them to the State's Attorney. He has examined them and we have a stipulation that they will be allowed into evidence without the proper proof. And also I have seen the protocol prepared by the Coroner's physician and I have stipulated to the reading of that rather than the calling of the Coroner's physician. Is that right, Mr. Conley?

Mr. Conley: Well, we will stipulate to the records from Kankakee, but we might choose to call the Doctor rather than stipulate as to the cause of death.

Mr. Carey: All right. I thought that was agreed.

The Court: All right, very well.

Mr. Conley: One other thing, Mr. Carey. I understand, your Honor, that there are four eye witnesses to this occurrence, two of which are here. Now, the list of witnesses was furnished to Mr. Carey some time ago which did not include one of the witnesses who is present in court today. However, Mr. Carey knows about this witness, Jimmy Hackman. In fact, I showed Mr. Carey the statement that Jimmy Hackman made to the police and Mr. Carey read it. [fol. 57] Mr. Carey: Just so I have an opportunity before he takes the stand to talk to him. Is he going to be your first witness?

Mr. Conley: No, our second witness.

Mr. Carey: Well, during the recess, I can talk to him.

The Court: During the luncheon recess, you talk to him. Make him available.

Mr. Conley: Yes, sir.

The Court: File the jury waiver.

The Clerk: All the witnesses in the Theodore Robinson case, please step forward.

Will all the witnesses please raise your right hand, and the defendant also.

(Witnesses sworn.)

Mr. Carey: Motion to exclude witnesses.

The Court: All witnesses will retire to the witness room until called. Go with the bailiff, please.

Mr. Conley: Your Honor, may we have one police officer?

The Court: One police officer may remain. You may proceed.

Mr. Conley: Yes, sir.

Mr. Carey: Just one more thing. The State's Attorney said he had a witness under subpoena by the name of [fol. 58] Neddie Batts. Is she here?

Mr. Conley: She is here. She is in the witness room.

Mr. Carey: Fine. We might want to use her.

The Court: Very well.

(Thereupon the People, to maintain the issues in this cause, offered and introduced the following evidence, to-wit:)

Mr. Conley: Take the stand.

MATTIE MAE GOLDENS, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. My name is Mattie Mae Goldens.

The Court: Mary?

The Witness: Mae Goldens.

The Court: Spell it.

The Witness: G-o-l-d-e-n-s.

By Mr. Conley:

Q. Now, will you please keep your voice up, Mrs. Goldens, so we can all hear you. Where do you live?

[fol. 59] A. I live 4859 Calumet.

Q. Are you married or single?

A. Single—married.

Q. Now, what relation if any was Flossie Ward to you?

A. My sister.

Q. Do you know where she lived at?

A. She lived at the time, it was 75th and Eggleston.

The Court: What is the name of the street?

Mr. Conley: Eggleston.

Q. Now, prior to February 28, 1959, when was the last time you saw Flossie Ward?

A. That Wednesday.

Q. The Wednesday preceding—

A. That's right.

Q. —the 28th?

A. That's right.

Q. By the way, do you recall what day the 28th was?

A. I don't know. That would be the Saturday.

Q. That would be a Saturday?

A. Certainly. On a Wednesday, the Wednesday I seen her.

Q. You saw her prior, the Wednesday preceding, is that [fol. 60] right?

A. That's right.

Q. Which would be the 25th of February, and where did you see her?

A. At my home.

Q. What condition was she in at that time?

A. She was well when I seen her at that time.

Q. Was she alive?

A. Yes.

Q. And when did you next see her or her body after that?

A. February 28th.

Q. February 28, and where did you see her?

A. In Miller's Funeral Home.

Q. Where is that located?

A. That's 63rd. I disremember whereabouts but it is on 63rd.

Q. What was her condition then?

A. She was dead.

Q. Both of these dates, the 25th and 28th of February were 1959, is that right?

A. That's right.

Q. Now, do you know the defendant in this cause Theodore Robinson?

A. Yes, I know him.

[fol. 61] Q. You see him in court here?

A. Yes.

Q. He is the man sitting at the counsel table, is that right?

A. That's right.

Q. How long have you known him?

A. I will say I have been knowing him about going on four years now.

Q. What if any relationship did he have to your sister Flossie Ward?

A. He was her boy friend.

Q. Her boy friend?

A. That's right.

Q. Do you know where he lived during those four years?

A. No, I just—I don't know where he was living during the four years but he recently staying with her over here.

Mr. Carey: I am sorry, I did not understand.

The Witness: I don't know where he was living but he would, you know, come over to see her and then they start living together.

By Mr. Conley:

Q. How long did they live together?

A. I say they lived together about a year, I guess.

Q. And about when would that be during that four years [fol. 62] preceding February 28, 1959, toward the end of that period or toward the beginning of the four year period?

A. Where was she living?

Q. While they were living together?

A. Lived at 816 East 57th Street.

Q. Do you know what year that was?

A. No.

Q. 1958, 1957, 1956?

A. 19—I think about '57.

Q. Do you know how long they lived together?

A. I will say about a year.

Q. When was the last time prior to February 28, 1959, that you saw Robinson?

A. I disremember when the last time I seen him because I didn't allow the man in my house. He didn't come to my house.

Mr. Carey: Object and move to strike it out.

The Court: Strike it out. Read the question to the witness.

(Question read.)

By Mr. Conley:

Q. If you can remember?

A. Well, I just can't remember when the last time I seen him.

Q. And did you ever know of any trouble between Robinson [fol. 63] son and your sister?

Mr. Carey: Objection.

The Court: Sustained. It calls for a conclusion.

Mr. Conley: I have no further questions.

The Court: Cross examine.

Cross examination.

By Mr. Carey:

Q. Mrs. Goldens, is that correct?

A. That's right.

Q. Now, you have known Theodore Robinson for about four years, is that correct, prior to last February—

A. Yes, that's about right, I say going on about four years. I don't know exactly.

Q. I understand. Around four years?

A. Around maybe four years now.

Q. And during that time, your sister Flossie Ward and Theodore lived together as husband and wife, is that correct?

A. That's right.

Q. And they lived at 816 West 57th Street?

A. 816 East 57th.

Q. And did you have occasion to ever visit them while they lived together?

A. Well, I did.

Q. How many times would you say during the period of [fol. 64] a year that they lived together that you visited with them?

A. Well, I didn't visit her—not too much.

Q. Now, during the period of the four years that you have known Theodore Robinson, how many times have you had occasion to see him? Would you see him once a week, once a month? You understand what I am talking about?

A. Well, just like I told him, I didn't never see—I didn't never be around him too much.

Q. Now, when you say you weren't around him too much, could you tell us just how often you would see him?

A. I guess about once a month, I will say.

Q. During that time, would you see him at your home or at their home or where would you see them or see him?

A. Well, most times was at her home.

Q. At where?

A. At her home, her home.

Q. How often—how long a period of time would you see him?

A. Well, sometime I go over there and stay sometime after, you know, after I come from work or something like [fol. 65] that.

Q. Well, would it be a couple of hours at a time?

A. Yes, about a couple of hours.

Mr. Carey: There will be no further questions.

Mr. Conley: You may step down, Mrs. Goldens.

(Witness excused.)

Mr. Conley: Would you call Miss Neddie Batts, please.

The Court: You have been sworn, haven't you?

The Witness: Yes, sir.

The Court: Be seated.

NEDDIE BATTS, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. Neddie Batts.

Q. Will you spell the last name, please?

A. B-a-t-t-s.

Q. And the first name?

A. Neddie, N-e-d-d-i-e.

Q. N-e-d-d-i-e?

[fol. 66] A. Right.

Q. Will you please keep your voice up, Miss Batts, so that we can all hear you. That's Miss Batts, isn't it?

A. Yes.

Q. Where do you live, Miss Batts?

A. 3939 Lake Park.

Q. Where are you employed?

A. Right now I am employed at Herman's Nursing Home.

Q. On February 28, 1959, where were you employed?

A. At Collins Barbecue House.

Q. Where is that located?

A. It's in 1000 block on 63rd Street. I don't know the correct address.

Q. In the 1000 block on 63rd Street?

A. That's right.

Q. That is in Chicago, Illinois?

A. Yes, it is.

Q. And how long prior to February 28 had you been employed there?

A. Oh, about a month, about four weeks.

Q. About a month?

A. Yes.

Q. And did you know the deceased in this cause, Flossie [fol. 67] Ward?

A. Yes, we worked together. We were working there.

Q. She worked there too?

A. Yes.

Q. Did she start to work there after you started or had she been working there when you started?

A. She was there when I started.

Q. What shift did you work?

A. Second shift.

Q. What hours did that include?

A. From ten to four.

Q. Ten p. m.?

A. Yes.

Q. To four a. m.?

A. That's right.

Q. What shift did Flossie Ward work?

A. The same shift, from ten to four.

Q. Now, this barbecue house is located on which side of 63rd Street, the north or south?

A. On the south side.

Q. And about how big is this restaurant?

A. Oh, it isn't too big. Oh, it's about 25 by 25, I would say.

Q. Would you say about the distance from you to about —(indicating)

[fol. 68] A. Yes.

Mr. Conley: Indicating about 25, 30 feet?

Mr. McDermid: What is the question?

Mr. Conley: The distance from the witness to me.

Mr. Greenfield: The size of the restaurant.

Mr. McDermid: Is that the size of the restaurant or the depth of the restaurant?

By Mr. Conley:

Q. Is this restaurant square or oblong?

A. Oblong, more or less.

Q. Well, from the door where you come in off the street to the back, about how long is the distance?

A. About from here, right where you are standing.

Q. About from you to me?

A. Yes.

Q. And from side to side, would it be more than that or less?

A. It was about the same. There isn't too much difference over there with the table and the counter and all.

Q. Is there a back portion to this restaurant?

A. Yes, there is.

Q. Would this 25 feet include that back portion or would that be in addition to the 25 feet?

A. No, that wouldn't include that.

[fol. 69] Q. It would be included?

A. No.

Q. And how much farther back was the back part?

A. It isn't too far. About—you have to go around the counter to get to the back.

Q. Well, would you say ten feet or twenty feet?

A. Yes.

Q. And it is about twenty-five feet from side to side too as you go in the door, is that right?

A. Yes.

Q. Now, can you describe the interior of this restaurant further as to the tables, if any, and counter, if any?

A. Yes. They have—must have three or four tables on one side and a counter is on the other—on the other side.

Q. As you go in off the street, on which side is the table on?

A. On the right side.

Q. And which side is the counter on?

A. On the left.

Q. And what type of a counter is this; is it straight or circular?

A. It is a circle counter.

Q. And did you work behind the counter or back and [fol. 70] forth?

A. I worked behind the counter.

Q. Where did Flossie Ward work?

A. She worked behind the counter.

Q. And at the counter, were there stools there along the counter?

A. Yes, there was.

The Court: We will stop here. Recess until two o'clock.

(Thereupon, said cause was recessed until 2:00 o'clock p. m. of the same day, Tuesday, September 15, 1959.)

[fol. 71]

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THEODORE ROBINSON

Before Judge Daniel A. Covelli.

Tuesday, September 15, 1959, 2:00 o'clock p.m.

Court met pursuant to recess.

Present: Same as before.

The Court: Call the case, please.

The Clerk: Theodore Robinson.

The Court: You may proceed.

Mr. Conley: Miss Batts, will you take the stand?

NEDDIE BATTs, a witness called on behalf of the People, having been duly sworn, resumed the stand, was examined and testified as follows:

Direct examination.

By Mr. Conley (continued):

Q. What is your name, please?

A. Neddle Batts.

Q. Now, keep your voice up again, Miss Batts. You were doing good before. You are the same Needie Batts that testified before we recessed, aren't you?

A. That's right.

[fol. 72] Q. And you realize you are still under oath?

A. Yes.

Q. And you didn't talk to me during the recess except when I told you that Judge Covelli takes the bench promptly?

A. No, I didn't talk to you.

Q. Now, do you know the defendant in this cause, Theodore Robinson?

A. Yes, I know him.

Q. How long have you known him, prior to February 28?

A. I had been knowing him for about four weeks.

Q. For four weeks?

A. Yes.

Q. Will you please keep your voice up, Ma'am?

Mr. Carey: Was that four weeks or four years?

The Witness: About four weeks.

By Mr. Conley:

Q. And how long did you tell us that you had been employed in this restaurant?

A. About four weeks.

Q. That was prior to February 28, 1959, is that right?

A. That's right.

Q. During those four weeks, about how many times would you say that you saw Robinson?

[fol. 73] A. Well, I couldn't say exactly. He was—

Q. To the best of your recollection?

A. Oh, he would come pick Mrs. Ward up sometime from work.

Q. He would pick up Flossie Ward?

A. Yes.

Q. And what time of the day or night would he pick her up?

A. Oh, she would get off at four o'clock and he would come by sometime to—to have lunch, dinner.

Q. How long before February 28, 1959, did you see him? When did you see him last?

A. When did I see him last?

Q. Yes.

A. I believe it was that Thursday night because I was off from work that Friday. That Friday night was my night off.

Q. You think it was Thursday night?

A. I am quite sure.

Q. Now, you see the man in court today that you knew as Theodore Robinson?

A. That's right.

Q. Would you point him out, please?

A. That's him.

Q. That is the gentleman on the other side of the table [fol. 74] in the middle?

A. Yes.

Q. Indicating the defendant Robinson. Now, on the night of February 28, what time did you come to work?

A. We would get there around eight o'clock.

Q. About eight o'clock?

A. Yes.

Q. And did you have occasion to see the defendant about ten-thirty?

A. Yes.

Q. That's a. m. or p. m.?

A. A. m.

Q. That is in the night?

A. In the night.

Q. That would be p. m., right?

A. Yes, right.

Q. Will you please describe for the Judge just what happened at about 10:30 p. m. on February 28, 1959?

A. Yes, I will. We had just come in and started working. And we got—started work around ten.

Q. By "we", whom do you mean?

A. Flossie and myself and Jimmy, and the other shift was ready to go off. And we was getting all of our stuff together and it wasn't long before I seen the man rushing [fol. 75] in and jumped over the counter.

Q. And what happened then?

A. And I heard Flossie who said, "Don't start nothing tonight."

Q. By the man, whom are you referring to?

A. Ted Robinson, and she said, "Don't start nothing tonight."

Q. Is that the man you identified as Theodore Robinson?

A. That's right.

Q. What if anything did Ted say?

A. I didn't hear Ted say anything.

Q. What if anything did Flossie say?

A. And she said, "Don't start nothing tonight, Ted."

Q. What if anything did Ted do?

A. When he jumped over the counter, I heard shots.

Mr. Carely: Objection.

The Court: Sustained. It is not responsive. The question is, what did Ted do.

Mr. Conley: May the jumping over the counter stand?

The Court: That may stand.

Mr. Carey: Objection.

By Mr. Conley:

Q. And he jumped over the counter?

A. Yes.

Q. And what if anything did Flossie do?

A. Flossie, she said, "Ted, don't start nothing tonight," [fol. 76] and she tried to get behind Jimmy.

Q. What if anything did you see or hear?

A. I heard shots.

Q. Then what happened after that?

A. Well, Flossie jumped over the counter.

Q. Which way? She was behind the counter at this time?

A. Yes.

Q. And she jumped—

A. Over the counter near the front door.

Q. Yes.

A. And Ted jumped over the counter and they run out of the place.

Q. And that is the last you saw of them, is that right?

A. That is the last I saw of them, yes.

Q. Did you see either one of them go out the door?

A. No, I didn't.

Q. What did you do after you saw them jump over the counter and you saw—and you heard the shots?

A. When I saw him come by, I went to the back. There is a small place, and when I got a chance I went in the back and went down in the basement.

Q. How many times did Flossie say, "Don't start nothing tonight"?

[fol. 77] A. Just once. I only heard it one time.

Q. And did you see either Flossie or Ted after that?

A. No, no more than until that night they called us down to identify Ted.

Q. And what night was that?

A. That was the Sunday night.

Q. And who called you down?

A. They called us from the police station.

Q. The police, and where did they call you?

A. I was home. They called me at home.

Q. Where did they tell you to go?

A. Hyde Park station.

Q. Police station?

A. Yes.

Q. And at the police station, what did you do?

A. We went down and they had a lineup there and they asked us to identify Ted, asked me to.

Q. What if anything did you do when you saw the lineup?

A. Well, when they asked me to identify him, I know Ted so I identified him.

Q. How far were you from Ted at that time?

A. About as far from Ted from here.

[fol. 78] The Court: How far? How many feet for the record?

Mr. Conley: Would you please read the last answer?

(The answer was read by the Reporter.)

The Court: Indicating how many feet, fifteen, twenty?

By Mr. Conley:

Q. Would you say from you to here?

A. Yes; just a small room.

Q. Or less distance from you to me?

A. No.

Q. About the same?

A. Yes.

The Court: That would be ten, twelve feet. Is that correct, counsel?

Mr. Carey: Yes, sir.

The Court: All right.

By Mr. Conley:

Q. And what did you say then, Miss Batts?

A. Well, I told them that it was Ted, the same night, I had seen him that Saturday night; the Ted that I know.

Q. Would you talk louder.

A. I told them that it was Ted.

Q. Did you say anything else at that time?

A. No, that was all.

[fol. 79] Q. And did you hear him saying anything at that time?

A. No.

Q. Now, how was Ted dressed when he came into the restaurant on the 28th?

A. He had on a dark topcoat, I believe, with a brown hat.

Q. And how was he dressed when he was in the station?

A. I believe he had on a brown leather jacket.

Q. And all that you testified to happened in Chicago, Illinois, is that right?

A. That's right.

Mr. Conley: Your witness.

Cross examination.

By Mr. Carey:

Q. Miss Batts, on the evening in question which is the 28th of February, 1959, it was a Saturday, is that correct?

A. That's right.

Q. Did you say you started to work at 10:00 o'clock on that evening?

A. Yes.

Q. But all the other nights you started at 8:00, is that correct?

[fol. 80] A. No, we had to get there and get our stuff together before we started working.

Q. So you spent two hours there previously, is that correct?

A. Just about that, yes.

Q. Now, when you came to work, do you go to work with Flossie?

A. No, I didn't.

Q. Now, was she at work when you got there?

A. Yes, she was.

Q. And you got there about would you say at quarter to eight or so or before 8:00 o'clock on that evening?

A. Oh, about ten minutes to eight.

Q. So you worked with Flossie for two hours or more before Ted, the man you identify as Ted, came, is that correct?

A. That's right.

Q. Now, is the place open at that time?

A. Yes, it is.

Q. When you say about preparation, what do you mean by that?

A. Well, you have to get your meat together. You have, you know, get it prepared for cooking. You have to get your potatoes—

[fol. 81] Q. That is the back room preparation?

A. That's right.

Q. Now, was Jimmy Hackman, is that his name, Jimmy Hackman, the chef?

A. Yes. He was there.

Q. And he was there also?

A. Yes.

Q. Now, had you had occasion to talk to Miss Ward during the two and a half hours while you were there before 10:30?

A. No, not talk with her.

Q. You didn't talk with her?

A. No.

Q. Now, you say that you knew Flossie for about two weeks?

A. About four weeks.

Q. Excuse me, about four weeks?

A. Yes.

Q. And you also met Ted about that time, is that correct?

A. That's correct.

Q. Now, other than your working association with Flossie, did you have occasion to be with her at any other time?

[fol. 82] A. No. They had taken me home couple of times at night when we get off.

Q. But you never visited with them socially?

A. No, not at any time.

Q. Do you know what the relationship was between Ted Robinson and Flossie?

A. They were going together, I guess.

Q. Do you know if they lived separate and apart or did they live together?

A. That I couldn't say.

Q. Now, did you see Ted every night that Flossie worked?

A. I wouldn't say I seen him every night.

Q. Would you see him most of the time? Did he pick her up most of the time she worked?

A. Yes.

Q. He would come there and have his meals, is that correct?

A. No. I wouldn't say he come there and have his meal but sometimes he would have something to eat.

Q. And you would leave around 4:00 o'clock in the morning, is that correct?

A. That's right. That's right.

Q. Now, do you know a man by the name of Mr. Ward?
[fol. 83] A. Mr. Ward? No, I don't.

Q. Now, did you have occasion to see—it's Flossie Ward, isn't it?

A. That's right.

Q. Did you have occasion to see Flossie Ward and Robinson and another man about a week prior to the 28th of February?

A. Yes, I did.

Q. And did you see them across the street from the barbecue place?

A. Yes.

Mr. Carey: Would you mark this Defendant's Exhibit 1 for identification?

(Thereupon said document was marked Defendant's Exhibit No. 1 for identification.)

Q. Did anything unusual occur during that meeting?

A. Yes, they had some words.

Q. Who had some words?

A. Well, I guess it was Flossie and Ted and the fellow.
The first time—

Q. Do you know who the fellow was?

A. No, I had never seen him before.

Q. Do you know if he was related in any way to Flossie?
[fol. 84] A. That I couldn't say.

Q. During the course of this, did Ted receive any injury?

A. No, not that I know of.

Q. Well, did you have occasion—you saw Ted on the 28th of February?

A. Yes.

Q. And you saw him also on the Sunday following, is that correct?

A. The Sunday night.

Q. Now, the 28th is a Saturday and it occurred in the morning, is that correct? This incident you are talking about, about 4—excuse me, Judge. I would like to withdraw that.

The Court: All right.

By Mr. Carey:

Q. This occurred in the evening on Saturday, is that correct, around 10:00 o'clock or 10:30?

A. Around 10:30.

Q. So that twenty-four hours later, you saw Ted in the police station? Would that be about right?

A. Yes.

Q. The following day and evening?

[fol. 85] A. Sunday night, Sunday night.

Q. You were about ten to twelve feet away from him at that time?

A. Yes.

Q. And it was well lighted?

Q. Yes, it was.

Q. And you also saw him at the barbecue place and that is a well lighted place, isn't it?

A. Yes.

Q. Now, what is the closest you were to Ted in the police station in feet? Would that be about ten or twelve feet?

A. Yes.

Q. Now, did you notice anything unusual about Ted's appearance at the police station?

A. No.

Q. Did you notice in particular a mark on his head?

A. No, I didn't.

Q. Now, I show you Defendant's Exhibit 1 for identification which purports to be a picture and ask you if you know who that is?

A. Yes.

Q. Who is it, please?

[fol. 86] A. Ted.

Q. And did he look that way on the 28th day of February, 1959, at the time you saw him—the 29th day?

Mr. Conley: That's leap year. 28.

By Mr. Carey:

Q. On the 1st day of March, 1959, at the police station?

A. Did he look like this?

Q. Yes.

A. Yes, he did.

Q. Now, during the time—

Mr. Conley: Just a minute. There is an objection, your Honor, to "Did he look like this". I don't think that is specific enough.

The Court: As I see it, counsel has a card or document marked Defendant's Exhibit 1 for identification which has on it a photograph, and I suppose you are referring to the photograph—

Mr. Carey: Yes.

The Court: —in asking the question. Show it to counsel so he will know what you are talking about.

Mr. Conley: I will withdraw the objection, Judge.

The Court: Very well, objection withdrawn.

By Mr. Carey:

Q. At the time that you saw Ted and this man whom you [fol. 87] do not know and Flossie across the street, did you see any gun or knife or club or anything at that time?

A. No.

Q. Now, what time of the day did this incident occur? I am talking now about across the street?

A. It was after we got off from work around—

Q. Was that after 4:00 o'clock in the morning, is that correct?

A. Yes.

Q. And did you go over together?

A. No. We—

Q. How far away were you?

A. Over there by the barbecue house.

Q. And did you leave before they left?

A. We all left about the same time.

Q. Did you leave together?

A. No.

Q. Now, this counter that you talk about in the barbecue place, how high is that, do you know?

A. It is about waist high when you stand.

Q. Is it as high as this?

A. Yes.

Q. I am referring to the bench in front of the jury box.

[fol. 88] It is about three feet or so, Mr. State's Attorney?

Mr. Conley: Yes.

Mr. Carey: Indicating for the record about three feet.

Q. Does that counter run like an "L"?

A. Yes.

Q. Does part of it run towards the back of the barbecue place?

A. Yes.

Q. Where was Flossie in reference to the counter when Ted came in?

A. She was up here, the front where the fryer is.

Q. Is that the smaller part of the "L"?

A. No, that's the large part.

Q. How long in feet is that large part of the "L"?

A. Oh, about fifteen feet, I imagine.

Q. And about how long is the base part of the "L"?

A. Oh, about five feet, I guess. It isn't too long.

Q. Now, Flossie was up in the front near where the preparations are made, is that correct?

[fol. 89] A. Yes.

Q. And how close is that to the door?

A. The front door or the back? To the front door?

Q. Yes.

A. It isn't too far. It's about I will say about three or four feet from the front door but she was on the other side of the counter.

Q. Was the door open or closed at that time?

A. It was closed, I imagine, because—

Q. Now, did you see the man that you identify as Ted outside on the street?

A. No, I didn't.

Q. And the first time you saw him, where was he with reference to the counter?

A. He was jumping over the counter when I seen him.

Q. And had you been in the store all of that time?

A. Yes.

Q. Where were you in reference to the counter?

A. I was between the long part and the small part, in the "L" of the counter.

Q. Between the long part—

A. Yes, I was preparing an order of barbecue to take out.
[fol. 90] Q. Were you in between the man you identify as Ted and Flossie?

A. Yes, I was.

Q. And that would mean then that—I will refer to him as Ted, was at the short part of the "L", is that correct?

A. No, he come in at the long part.

Q. Yes.

A. And he come up, passed me and went to the short part of the "L".

Q. In other words, he went by Flossie, is that correct?

A. No, by me.

Q. By you?

A. Yes.

Q. And he went to the short part of the "L", is that right?

A. Yes.

Q. At that time, Flossie was up at the—where you prepare things, that would be at the long part of the "L"?

A. Yes, that's the long part of the "L".

Q. And you were between the long part and the short part, is that correct?

[fol. 91] A. Yes.

Q. And Ted was on the other side?

A. No, Ted when he jumped over the counter, we were all on the same side of the counter.

Q. How close were you to one another in distance, in feet?

A. Flossie?

Q. No, all of you together? How far were you from Flossie?

A. I wasn't too far away from Flossie.

Q. Well, in feet?

A. About one or two feet.

Q. And how far were you from Ted?

A. When Ted jumped over the counter, he rushed up from where he was.

Q. Well, how far was the place where Ted jumped over the counter to you? Do you understand what I mean?

A. No, I couldn't.

Q. You say Ted jumped over the counter?

A. Yes, and he come—

Q. How far was that in feet away from you, the point where he jumped over the counter?

A. About three feet, I guess.

[fol. 92] Q. So you were all pretty close to him?

A. Yes, just a small place.

Q. The only thing you heard in the way of conversation was what you testified Flossie said?

A. That's right.

Q. Now, Jimmy Hackman was where?

A. He was over behind the counter too.

Q. Were you all in the same group?

A. Yes.

Q. Now, did you look at Ted at that time?

A. No, I didn't.

Q. Did you look at Ted at any time while this was occurring?

A. When he jumped over the counter, I looked at him.

Q. He said nothing?

A. No.

Q. And which way was he looking?

A. Up towards where we were because the way he was coming—

Q. Did you notice anything unusual about him?

A. Yes. He jumped over the counter. That was unusual.

Q. Well, about his appearance, not about his actions?

[fol. 93] A. No, no.

Q. Now, he had on a hat?

A. Yes.

Q. And he had on a coat, is that correct?

A. Yes, that's correct.

Q. Now, during this incident, you passed him, didn't you?

A. No, I didn't pass him. He come by me.

Q. He passed you?

A. He passed me.

Q. When he passed you, how close was he to you?

A. He was within reaching distance to me.

Q. A few feet?

A. Yes.

Q. And he said nothing to you?

A. No.

Q. After he passed you, then you went in the direction that he came from?

A. That's right.

Q. And you didn't turn around after that?

A. No.

Q. Now, after you got past him, how long after you were past him did you hear the first shot?

A. I heard the first shot before I got away. I hadn't even [fol. 94] left from there. When I run—

Q. The shot was fired before you went past Ted or before he passed you, is that correct?

A. He had went past me and I heard a shot. It is a small place and I couldn't get by Ted until he come—give me room to get by. When he come by, it was all over.

Q. You mean that he stepped aside to let you by?

A. No. Well, there is an icebox there.

Q. Yes.

A. And a garbage can there. I got over to the garbage, then he went past me.

Q. So you got out of his way?

A. Yes.

Q. When he went over the counter, that is the first time you saw him?

A. Yes.

Q. Did he jump over the counter?

A. He jumped over the counter.

Q. By putting his hands on the counter and jumping over?

A. Yes, one hand on the counter and he jumped over.

Q. He sort of flipped over the counter, is that correct?
[fol. 95] A. Yes.

Q. And how wide is that counter?

A. Oh, I guess it is about a foot wide, a foot.

Q. A distance of a foot?

A. Yes, just wide enough to serve barbecue. We serve orders mostly to take out.

Q. About as wide as that bench?

A. Yes.

Mr. Carey: About sixteen inches or so, Mr. Conley?

Mr. Conley: Yes.

By Mr. Carey:

Q. Now, did he run after he got behind the counter?

A. Yes, he was running when he—

Q. He was running?

A. He rushed up towards front.

Q. Did you ever hear Ted say anything from the time of this incident which is the 28th of February until today?

A. No, I haven't.

Q. In other words, he has never said anything that you have ever heard?

A. No.

Q. But before that, you had heard him talk, hadn't you?
[fol. 96] A. Yes, I had.

Q. When you saw him at the station, did he look the same as he looked when you saw him at the barbecue pit?

A. Did he look the same? He wasn't dressed the same, if that is what you mean.

Q. No, I mean appearance. I am talking about his face. Did he look the same?

A. He did to me.

Q. How long were you in the basement, Neddie? Is that the correct pronunciation, Neddie?

A. Yes.

Q. Before you came out?

A. Well, I stayed down there until the officers got there.

Q. And about how long would that be?

A. About thirty minutes, I imagine, because they stayed—

Q. Where was Jimmy at this time?

A. I think he was in the basement too. I am not for sure who was there because it was dark down there, because nobody wouldn't turn no lights on.

Q. When did you see him there?

A. Jimmy?

[fol. 97] Q. Yes.

A. When they come down to get us to take us over to the police station.

Q. All right. That's Jimmy Hackman?

A. Yes.

Mr. Carey: All right, no further questions.

Redirect examination.

By Mr. Conley:

Q. Now, on this incident that Mr. Carey asked you about where Mr. Ward and Ted and Flossie were involved, how long before the shooting was that?

A. That wasn't the same night. That was, oh, it must have been a week before that.

Q. And did you or did you not know that Flossie was married to this Mr. Ward?

A. No, I had never saw the fellow before that week. The first time I had ever seen him.

Mr. Conley: I have no further questions.

Recross examination.

By Mr. Carey:

Q. Neddie, this incident with the unknown man,—

A. Yes.

Q. —do you know which one I am talking about?

A. Yes.

[fol. 98] Q. Where were you going when you left there?

A. I was going home.

Q. Did anyone ask you to call anybody?

A. Yes.

Q. Who was that?

A. Ted asked me to make a call.

Q. What did he ask you to do?

A. He asked me to call the officers, the police.

Q. You mean the police?

A. Yes.

The Court: Who told you that?

The Witness: Ted.

The Court: What incident are you speaking of?

Mr. Carey: I am talking now about the week before.

Q. That is what you have in mind, is that right, Neddie?

A. Is that what you are asking about? That is what I am telling you about.

Q. About a week before?

A. Yes.

Q. How long were you there in matter of minutes with Ted and Flossie and this unknown man, the man whose name you do not know?

A. Oh, I will say about five minutes, because we was [fol. 99] getting off from work and I was waiting on a cab to come by. I didn't call one, just one passing by.

Q. Do you know why Ted wanted you to call the police?

A. As I say, they were having some words.

Q. Ted and this other man?

A. And Flossie.

Q. What were they saying?

A. What were they saying?

Q. Yes.

A. Well, Ted wanted Miss Ward to go with him and this other fellow wanted her to go with him, and that was just about it.

Q. And there were no blows struck at that time that you saw?

A. I didn't see no blows.

Q. Now, this night, I am still talking about with this unknown man, you left the barbecue place with Flossie and Ted on that night, is that right?

A. No.

Q. Who did you leave with?

A. I left for a cab.

Q. I mean when you left out of the place?

[fol. 100] A. We all come out together.

Q. When you say "we", who do you mean?

A. Me, Flossie and I don't know this other fellow's name, but there was another fellow that was working down there at the barbecue place.

Q. You came out?

A. Yes.

Q. Now, this man whose name we do not know at the present time, he joined you later, is that correct?

A. That's right. He was out on the street when we got there, I guess.

Q. Now, you and Flossie and Ted had agreed to go home together, is that correct, when you left?

A. Yes. Ted was going to drop me off at home.

Q. So as far as you know, this man was unexpected there, is that correct?

A. Yes.

Mr. Conley: Objection, your Honor.

The Court: Sustained.

Mr. Carey: There will be no further questions.

Mr. Conley: You may step down.

(Witness excused.)

Mr. Conley: Call Jimmy Hackman, please.

[fol. 101] The Court: Were you sworn, sir, this morning?

The Witness: Yes.

The Court: Be seated.

JIM PAUL HACKMAN, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, sir?

A. Jim Paul Hackman.

The Court: Hackett?

The Witness: Hackman.

By Mr. Conley:

Q. How do you spell your last name?

A. H-a-c-k-m-a-n.

Q. And where do you live, Mr. Hackman?

A. 6120 Greenwood.

Q. Now, would you please speak more slowly and a little bit louder. Now, where are you employed, Mr. Hackman?

A. 1035 East 63rd.

Q. In what capacity are you employed there?

A. At the barbecue house.

[fol. 102] Q. At the barbecue house, and what particular duties do you perform there?

A. Cook.

Q. And for how long have you been employed there?

A. Four years.

Q. What is the address there?

A. 1035 East 63rd.

Q. 1035, and you have been employed there how long?

A. Four years.

Q. Now, did you know the deceased in this cause, Flossie Ward?

A. Yes, I did.

Q. Now, prior to February 28th, 1959, how long did you know her?

A. Oh, I had been knowing her about four months.

Q. About four months, and how did you happen to know her?

A. During the time that—working on the job, she was employed.

Q. And she worked at the same place?

A. That's right.

Q. And did you know her before she came to work there?

[fol. 103] A. No, I didn't.

Q. Now, what were her duties there?

A. Waitress.

Q. Waitress. What shift did she work?

A. Four to—eight to five.

Q. About eight p.m. to five a.m.?

A. Eight p.m. to five a.m.

Q. Anyway, that would be the night shift?

A. Right.

Q. Do you know the defendant in this cause, Ted Robinson?

A. Yes, I did.

Q. And for how long prior to February 28, 1959, did you know him?

A. About the last part of December.

Q. Will you please keep your voice up, Mr. Hackman. Since the latter part of December?

A. That's right.

Q. That would be about two months?

A. About—

Q. Two or three months? How many months?

A. About two months.

Q. Where was the first place you ever saw him?

A. At the barbecue house.

[fol. 104] Q. Did you ever see him any other place but the barbecue house?

A. Before then, no.

Q. You mean from the latter part of December until February 28th, you saw him only at the barbecue house, is that right?

A. Right.

Q. And about how often did he come to the barbecue house during that period of time?

A. About three or four times a week.

Q. At about what time of the day or night would he come?

A. Well, I will say about 10:00 p.m.

Q. He came about 10:00 p.m.?

A. Yes.

Q. And how about in the morning?

A. Oh, around 5:00.

Q. Whom would he leave with, if anybody?

A. Flossie Ward.

Q. And prior to February 28, 1959, when was the last time you saw him?

A. Before the 28th?

Q. Yes, about how long?

A. Well, I seen him about the 27th.

[fol. 105] Q. About the 27th, that would be about the day before or so?

A. Yes.

Q. Now, will you please describe, Mr. Hackman, the physical appearance of this restaurant, the size and the placement of the furniture and so forth?

A. Well, it is a small place, and as you come into the door, there is two eating tables.

Q. Pardon me. By "small", about what dimensions would you say? From the street first to the back, about how many feet would you say it is; just an estimate to the best of your ability?

A. Oh, maybe about twenty feet, I imagine.

Q. Would that be from you to me or less or more?

A. A little longer, a little further than that.

Q. I am sorry, I can't hear you.

A. A little bit further than that.

Q. About this far?

A. About that.

Q. Indicating about 30 feet.

A. Somewhere like that, I guess.

Q. And how wide was the place?

A. It is about as wide as this place here. (indicating)

[fol. 106] The Court: Indicating for the record how wide?

By Mr. Conley:

Q. About twenty feet?

A. Yes.

Q. Would you answer the question so that the reporter can write it down? As you walk into the place, how was the furniture situated?

A. There are two tables.

Q. Are the tables to the right or to the left?

A. To the right.

Q. And is there a counter?

A. Yes, there is.

Q. Will you please describe the counter?

A. Well, the counter is on the left-hand side as you walk into the door.

Q. What shape is it in?

A. Well, it is—just as you walk in the door, there is the deep fry is setting there and the grill as you walk in the door, and we have a partition between the fryer and the table.

Q. Now, the counter itself, in what shape is it in, an "L" shape or semi-circle?

A. A circle, in a circle, I will say.

Q. And the longest portion is which one, the one in the back or the one along the side?

[fol. 107] A. The back.

Q. Did you have occasion to see Ted Robinson on February 28th, 1959, at about 10:30 p. m.?

A. That's right.

Q. Where were you?

A. I was at work fixing orders during that time.

Q. Where were you in the place?

A. I was in the front of the place.

Q. And did you see him come in?

A. Yes, I did.

Q. Did you recognize him when he came in?

A. Yes, I did.

Q. What did he do?

A. Well, he came in there. He stopped at the front of the counter and he leaves the front of the counter and goes to the back of the counter and jumps over and comes behind the counter and begins to shoot.

Q. Now, did he walk past where you were or did he stop before he reached where you were behind the counter?

A. No, he walked past me.

Q. And then he jumped over the counter?

A. Well, he jumped over the counter when he walked past me.

[fol. 108] Q. Now, I will show you what I will ask to have marked People's Exhibit 1 for identification.

(Thereupon said item was marked People's Exhibit No. 1 for identification.)

Which is a gun apparently .25 caliber automatic pistol, and I will ask you if you have ever seen that before or any gun like it before?

A. Yes, I have.

Q. When was the last time?

A. When Theodore Robinson entered the restaurant.

Q. Will you describe what if anything Theodore had in his hand when he entered the restaurant?

A. Well, he had the gun in his hand.

Q. And did you see a gun in his hand?

A. I can see, as a matter of fact, as I can see of it now. (indicating)

Q. And you are indicating about half of the gun?

A. That's right.

Q. Do you recall which hand he had the gun in?

A. No.

Q. But you do recall seeing the gun in his hand?

A. That's right.

Q. What happened after he jumped over the counter?

[fol. 109] A. Well, he started to the front of the restaurant and he began to start shooting.

Q. Did you see him shooting?

A. Yes.

Q. Did you see which direction he was shooting?

A. Yes; I did.

Q. Which direction was he shooting?

A. He was shooting—

Mr. Carey: Objection.

The Court: What is the objection?

Mr. Carey: Did you see him shooting? Ask him which direction the gun was pointed. I understand there were two shots fired. It might have occurred at different times.

The Court: Ask him that. Which way the gun was pointed the first shot.

Mr. Conley: I will withdraw the first question.

The Court: All right, very well.

By Mr. Conley:

Q. At that time, Mr. Hackman, you say that the defendant Robinson was farther in the restaurant than the point you were in, is that right?

A. That's right.

Q. And after he jumped over the counter, where was [fol. 110] Flossie Ward with regard to him?

A. Well, she was at the front of the restaurant.

Q. Was she standing still or was she moving?

A. She was fixing an order.

Q. I am sorry, I can't hear you.

A. She was working on an order.

Q. I mean when you saw her after Robinson jumped over the counter, was she standing still or was she moving?

A. No, she was moving.

Q. Which direction was she going in?

A. Well, she was moving away from him, getting out of the way of him.

Mr. Carey: Objection to the conclusion.

The Court: Getting away from him, strike that out.

By Mr. Conley:

Q. Was she moving toward the door or away from the door?

A. Towards the door, that's right.

Q. And when you saw the defendant fire the gun, was the gun pointed towards the door or away from the door?

A. It was pointed towards the door.

Q. Was it pointed towards Flossie Ward?

[fol. 111] A. That's right.

Q. And how many shots did you hear?

A. I heard two shots.

Q. What did you see or hear after that?

A. Well, then I went into the back to get out of his way.

Mr. Carey: Objection.

The Court: I went in the back may stand. The rest is stricken.

By Mr. Conley:

Q. And did you see either one of them go out of the door?

A. No, I didn't.

Q. By the way, can you tell us how Robinson was dressed at that time?

A. Well, he had on a—I will say a blue coat and a brown hat and a—I didn't notice the pants.

Q. And did you have occasion to see him after that, after the 28th?

A. Yes, I did.

Q. Where was that?

A. In the 7th District station in the lineup.

Q. And can you tell us how many men were in the lineup?

A. There was five fellows in the lineup.

[fol. 112] Q. And what did you say or do?

A. I identified Theodore Robinson.

Q. What did you say?

A. I said, "He is the man that did the shooting."

Q. And how far were you from him when you said that?

A. Well, I was close enough—I touched him with my hand.

Q. What did he say when you said, "This is the man that did the shooting"?

A. He didn't say anything.

Mr. Conley: Your witness.

Cross examination.

By Mr. Carey:

Q. Mr. Hackman, is it?

A. That's right.

Q. How old are you?

A. 28.

Q. Now, did I understand you to say that you knew Flossie Ward for about four months prior to February 28th, is that correct?

A. That's right, that's right.

Q. And she had worked for this employer for how long, if you know?

[fol. 113] A. Well, during the time that she had been there, four months.

Q. And had she ever worked there before those four months?

A. Yes, she had.

Q. And how long ago was that?

A. Well, I wasn't there during the time.

Q. It was just what you have heard, is that correct?

A. That's right.

Q. But you have been there for about four years?

A. That's right.

Q. And you have known Ted then for about two months prior to this incident?

A. Yes. That's right.

Q. Now, this counter that you talk about in the barbecue, it's like an "L", is that correct?

A. Yes, I would say so.

Q. And is one end of the "L" attached to the wall on the side?

A. Yes, it is.

Q. And is the other part of the "L" attached to the wall in the front?

A. That's right.

[fol. 114] Q. Now, the tables that the people sit at, how are they served?

A. Well, they—it is on the right-hand side at the wall.

Q. Do they come up and get the food?

A. No, we carry food to them.

Q. And how do the people get—waitresses themselves get the food to them?

A. Well, we have a gate at the end of the counter.

Q. At which end?

A. At the rear end of the counter.

Q. Now, as I understand it, the place you worked at the preparation, that is in the front, is that correct?

A. That's right.

Q. And how far is the cooking area from the counter?

A. From the counter?

Q. Yes.

A. Well, I will say it's about three or four feet.

Q. And then you have about a three foot passage in there, is that correct?

A. That is correct.

Q. And the girls come to you and get the orders and also [fol. 115] prepare some other things, is that right?

A. Yes, sir.

Q. Now, did you see Robinson come in?

A. Yes, I did.

Q. Now, when he came in, was Flossie near you?

A. Yes, she was.

Q. Was she between you and Ted?

A. During the time he came in?

Q. When he came in?

A. Yes, she was.

Q. She was closer to the front then, is that correct?

A. That's correct.

Q. How close was she to Ted when he came in the door, in feet?

A. About five feet.

Q. And separating them was the counter, is that correct?

A. That's right.

Q. Did she turn around and look at him?

A. Yes, she did.

Q. Did she say anything?

A. Yes, she did.

Q. What did she say?

[fol. 116] A. She said, "Ted, don't start anything."

Q. She said that as soon as he came in, is that correct?

A. That's right.

Q. And then she goes back to what she was doing?

A. Well, during the time—yes.

Q. Just answer that question.

A. Yes.

Q. She did, and she was preparing something. She looked and said this to Ted and she went back to what she was doing?

A. Yes.

Q. Did he stop?

A. Yes, he did.

Q. How long did he stay stopped?

A. Oh, I will say about a minute.

Q. What did he do when he was stopped?

A. He stood in the front of the counter and we have a glass counter. He had his arm up on the glass with the gun in his hand.

Q. For about a minute?

A. Yes.

Q. How close was Flossie to him at that time?

A. Oh, about six feet, I reckon.

[fol. 117] Q. From him, and how close was she from his arm?

A. From his arm? Oh, maybe about five feet.

Q. And did she look at him?

A. No, she didn't during the time, no.

Q. Did you look at him?

A. Yes, I did.

Q. And that's when—did you leave them?

A. No, I didn't.

Q. Did you notice anything unusual about him?

A. No.

Q. Now, he then left after standing there with the gun pointed at her for about a minute, you would say, is that correct?

A. That's right.

Q. He then left and went towards the other part of the counter, is that correct?

A. That's right.

Q. Would that be in a diagonal?

A. No, that's from the front—that is straight there.

Q. Straight?

A. That's right.

Q. And then he passed behind her, is that correct?

A. That's right.

[fol. 118] Q. And how close was the closest he had ever gone to her?

A. Well, that I wouldn't know.

Q. Well, as he was standing at the counter, she was five feet away, is that correct?

A. That's right.

Q. From his hand?

A. Yes.

Q. And as he walked, he would get closer to her, is that right?

A. No, going toward the other end of the counter, he would be going away.

Q. Walked away?

A. Yes.

Q. He went to the other end of the counter, and how far was he away from her when he was at the furthest point that way from her? Do you understand what I mean by that?

A. Well, I will say about twenty feet.

Q. Twenty feet away?

A. Yes.

Q. Did she look at him at that time?

A. No, she didn't.

Q. Did he say anything?

[fol. 119] A. No, he didn't.

Q. In fact, he never said anything, is that correct?

A. That's right.

Q. Now, Neddie—is that her name, Neddie?

A. Yes.

Q. Is she sometimes called Sally?

A. That's right.

Q. Now, Sally was also behind the counter?

A. That's right.

Q. She was on the other side also, is that correct?

A. That's right.

Q. Am I correct in saying then that Flossie was closest to the front?

A. Yes, she was.

Q. You were next closest?

A. That's right.

Q. How far were you away from her?

A. Well, we were side by side.

Q. A foot or less?

A. Less than a foot.

Q. And then on the other side was Sally?

A. That's right.

[fol. 120] Q. And how close was she to you?

A. Oh, about a foot.

Q. So you were really bunched up there, is that right?

A. Yes.

Q. No other employees?

A. Not in the front, no.

Q. Now, were there any customers there?

A. Yes, there was.

Q. And do you know any of them?

A. Well—

Q. Answer yes or no?

A. No.

Q. And have you seen them since?

A. No, I haven't.

Q. Had you seen them before this night?

A. That I wouldn't know.

Q. How many people were there altogether?

A. Well, maybe about ten, I would say.

Q. Customers besides employees?

A. That's right.

Q. Were there any of them sitting at the counter?

A. Yes, there was.

Q. How many?

[fol. 121] A. Well, about six.

Q. Were any of them sitting at the counter that Ted passed? In other words, did he pass any of the people sitting at the counter when he walked from the front to the rear?

A. Yes.

Q. And how many would you say he passed?

A. He passed about six.

Q. And that is when he had a gun, is that correct?

A. That's right.

Q. Now, he walked up to the counter or did he run or how did he go?

A. He was in a hurry. He didn't run. He was just walking fast.

Q. When he got to the counter, did he stop momentarily?

A. No, he just jumped over the counter.

Q. He flipped it with the hand and jumped over?

A. No, he just jumped over to my knowing.

Q. Did you watch him all this time?

A. No, I didn't.

Q. Now, you saw him with the gun?

A. That's right.

Q. But you didn't watch him?

[fol. 122] A. No.

Q. When he got over the counter, he was then the furthest one to the back or the closest to the back?

A. He was closest to the back.

Q. Sally was next?

A. That's right.

Q. And then came yourself?

A. Yes.

Q. And then Flossie, is that right?

A. That's right.

Q. So there were then two people between Ted and Flossie, is that correct?

A. That's correct.

Q. And it was a three foot passageway, is that correct?

A. That's right.

Q. Now, Sally passed him, is that correct?

A. That I wouldn't know.

Q. Were you watching?

A. No, I wasn't.

Q. Or don't you remember?

A. I don't remember that.

Q. Now, were you in between Ted and Flossie when the [fol. 123] first shot was fired?

A. Yes, I was.

Q. Were you facing him?

A. Yes, I was.

Q. And were you turned facing him like I am facing you, indicating a full view of me?

A. Yes, I was. I was on my way by him.

Q. And where was she?

A. She was on her way out.

Q. I am talking about Flossie.

A. On her way out the door.

Q. She was already over the counter?

A. No, she wasn't. She was coming to the counter to go out.

Q. She was still behind it?

A. That's right.

Q. Did she say anything at that time?

A. No.

Q. And he said nothing?

A. No.

Q. Did he walk by you?

A. That's right.

Q. Did he look at you?

A. No, that I wouldn't know.

[fol. 124] Q. Were you looking at him?

A. I was looking as I was going.

Q. In other words, you didn't pay any attention?

The Court: Just a moment. This is not a place of amusement, young man. If you want to laugh, get out of here. This is serious business.

Go ahead.

By Mr. Carey:

Q. In other words, you didn't pay any attention to him?

A. That's right.

Q. You didn't?

A. No, I didn't.

Q. The shots were fired while he was in the passageway, between where you were, between him and Flossie?

A. When the first shot was fired, that's right.

Q. The first one?

A. Yes.

Q. And where was he when the second shot was fired?

A. He was still behind the counter.

Q. And where was Flossie?

A. She was on her way out.

Q. How close was she to him when the first shot was fired?

A. Well, I will say about three or four feet.

[fol. 125] Q. Three or four feet?

A. That's right.

Q. How close was she to him when the second shot was fired?

A. Oh, she was about five feet.

Q. Now, did you pass him before he jumped the counter?

A. No.

Q. In other words, he jumped the counter and left, is that correct?

A. That's right.

Q. That is the last time you saw him until you saw him at the police station the following night?

A. That's right.

Q. And he looked the same at the police station as he did when he was in the restaurant, is that correct?

A. Yes, he did.

Q. I am talking about his expressions?

A. Yes, he did.

Q. And did you—how long were you with him in the police station in his presence?

A. For about an hour.

Q. An hour? Did he say anything while he was there?
[fol. 126] A. No, not to me, no.

Q. Did Ted look the same to you on this evening? I am talking about the 28th as he had looked every time you had seen him for the past two months?

A. Yes, he did.

Q. No expression? Was there any expression on his face?

A. No.

Q. And he walked all right?

A. Yes, to me he did.

Q. As I understand it, he just walked in the door, pointed the gun at Flossie. She said something to him while he had the gun, is that correct?

A. That's right.

Q. He leaned his hand on the glass counter about three feet away from Flossie?

A. About five feet.

Q. Oh, excuse me, about five feet. She wasn't facing him at the time?

A. No.

Q. He then walked twenty feet to the back and away from her, is that correct?

A. That's correct.

Q. He jumped the counter and came back in the passage- [fol. 127] way, is that correct?

A. That's correct.

Q. And he stood there about a minute, you said, before he went to the back. Can you tell me about how long he was in the store before the first shot was fired?

A. I will say about two minutes.

Q. So about a minute after the first shot was fired, and you didn't see him leave nor did you see Flossie leave?

A. No, I didn't.

Q. Thank you. Oh, one other; you identified People's Exhibit 1 for identification, is that correct, similar to the one that you saw in Ted's hand?

A. That's right.

Q. Now, is that what you saw or can you tell me what you saw?

A. Well, he had it about something like this (indicating), I will say, and I can see this part here.

Q. Then you saw then the barrel, about two inches of the barrel, is that right?

A. That's right.

Q. The tip, and you couldn't see any of the handle, and [fol. 128] just a portion of the trigger shell, is that correct?

A. That's right.

Q. And is that the most you saw at any time?

A. During the time, yes.

Q. Yes, that's all you saw. Do you know if any of the pellets that were fired in the store were ever recovered?

A. Well, the hull, yes, I know one was.

Q. One of the bullets fired in the restaurant was recovered, is that correct?

A. The shell part was.

Q. The casing?

A. The casing.

Q. But the pellet part, do you know about that?

A. No.

Q. But the police were there, is that correct?

A. That's right.

The Court: That concludes the cross examination?

Mr. Carey: Yes. Excuse me.

The Court: Any redirect?

Mr. Carey: I'm sorry.

The Court: All right, sir.

Mr. Conley: Anything further, Mr. Carey?

[fol. 129] Mr. Carey: No.

Redirect examination.

By Mr. Conley:

Q. Now, when this Robinson walked in, did he appear to you to be drinking or sober?

A. He seemed to be sober to me.

Q. And did you see the shell casing that was recovered by the police?

A. Yes, I did.

Q. And I will show you what I will ask to have marked People's Exhibit 2 for identification.

(Thereupon said item was marked People's Exhibit No. 2 for identification.)

Which is a small white box containing one shell casing, and I will ask you if that shell casing looks like the one

that was recovered by the police? Would you examine it, please?

A. Yes, it looks like the one.

Q. And how was Robinson dressed on that occasion?

Mr. Carey: Asked and answered, Judge.

The Court: Yes, he said he had on a blue coat and a brown hat.

Mr. Conley: I will withdraw the question.

[fol. 130] The Court: Very well.

Mr. Conley: I forgot that I had asked him. I have no further questions.

The Court: Any re-cross?

Mr. Carey: No, Judge.

(Witness excused.)

The Court: We will take a ten minute recess.

Mr. Carey: Judge, we have a witness and we have had great difficulty in getting her and she is here and she is ill and I was wondering if the State's Attorney would be kind enough to tell me when he will conclude his case and if we can't conclude today, maybe we can excuse her and bring her back tomorrow and we will put her on as our first witness.

Mr. Conley: I don't know if we can conclude our case today, but whatever would be convenient to the witness.

The Court: Where is she?

Mr. Carey: She is here.

The Court: Have her come up.

Mr. McDermid: I would like to talk to her a few minutes. I will get that arranged while you are recessed.

[fol. 131] The Court: Bring her up so I can tell her she has to come back tomorrow morning. All right, take a ten minute recess.

(Recess taken.)

Mr. Carey: Judge, before you bring out the prisoner, this is Mrs. Calhoun.

The Court: You can bring him out.

Mr. Carey: We will get to her tomorrow.

The Court: Bring him out. Mrs. Calhoun, I understand you are ill?

Mrs. Calhoun: Yes, I am.

The Court: I am going to excuse you now. You be back here tomorrow morning at 10:30. Do you think you will be able to put her on?

Mr. Carey: She will be our first witness as soon as the State concludes.

The Court: How many more witnesses do you have?

Mr. Conley: We have three witnesses we expect to put on this afternoon, and we have two witnesses tomorrow.

The Court: Then better not have her get here until—are they long?

Mr. Conley: The doctor and the ballistics expert.

The Court: Probably will take some time.

[fol. 132] Mr. Carey: No.

The Court: What time do you want her?

Mr. Carey: 11:30.

The Court: You be here at 11:30 and we will put you on the stand. You may go home.

All right, bring in the defendant.

CLARENCE STARR, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

The Court: Have you been sworn, sir?

The Witness: Yes, I was.

The Court: Be seated, please.

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. Clarence Starr.

Q. How do you spell your last name?

A. S-t-a-r-r.

Q. What is your business or occupation?

A. Chicago policeman, 22nd District.

Q. You are assigned to the 22nd District?

A. I am, sir.

[fol. 133] Q. Will you please keep your voice up?

A. All right, sir.

Q. We seem to have some interference out there. Did you have occasion to arrest the defendant in this cause, Theodore Robinson?

A. Yes, I did.

Q. Who participated in this arrest with you?

A. Officer Kerfman and Officer Siersten. Officer Kerfman.

Q. That is K-e-r-f-m-a-n, is that right?

A. And another officer.

Q. And another officer?

A. That's right. I don't recall his name.

Q. Where did you arrest him?

A. At 141 North Wolcott.

Q. By the way, where did you live?

A. I live—I did at that time 141 North Wolcott.

Q. On February 28, you lived at 141 North Wolcott?

A. I did.

Q. How did you happen to arrest him?

A. Well, on March 1 in the late afternoon, Robert Moore came to my apartment and he told me that a preacher and a lady had been killed.

Mr. Carey: Objection.

[fol. 134] The Court: Sustained. You can't tell us what they told you.

Mr. Carey: Judge, I think in this case I am going to withdraw my objection. I would like to hear what he said.

The Court: Very well, objection withdrawn.

Mr. Carey: I am sorry.

The Court: That is all right.

By Mr. Conley:

Q. Tell us what the conversation was?

A. Robert Moore came to my apartment and he told me that a preacher and a lady had been killed on the south side,

namely Flossie Ward and Reverend Elmer Clemons, and he said, "The supposed killer is now up in my house", he said. He said he just had a call from Robert Moore's mother stating that Mr. Robinson's mother had called his mother and told her about it, and then she called him. And he said, "I am afraid for him to be in my house and I would like for you to go up and arrest him." So I called for assistance.

Q. Now, by the way, where did this Robert Moore live?

A. Apartment 1307, 141 North Wolcott.

Q. What did you do then after this conversation with [fol. 135] Robert Moore?

A. Well, I called for assistance and Officer Kerfman and the other officer, they responded and I met them on the first floor of the building so we went up to Robert Moore's apartment at 1307. So I knocked and I went in and I looked around and I didn't see anyone so I asked where was the fellow named Ted, and she said, "He just stepped out the door." I said, "What kind of clothes does he have on; a white shirt?" She said, "He has got—"

Mr. Carey: Objection as to this.

The Court: Sustained.

By Mr. Conley:

Q. What did you do then after this conversation?

A. We went out into the hallway and we saw the man that we thought was Ted.

Q. And would you describe the man you saw in the hallway?

A. Well, he had on a white shirt and brown leather jacket, no hat, and he was about—I guess he was around five feet, six, seven, dark brown complexion with a mustache.

Q. And do you see that man in court today that you saw in the hallway at 141 North Wolcott?

[fol. 136] A. I do.

Q. And that is the defendant Robinson, is that right?

A. Yes, it is.

Q. Did you have any conversation with him at that time?

A. Yes, I did.

Q. And who was present?

A. The two officers and Robinson and myself.

Q. What if anything was said at that time and place?

A. I asked him what his name was and he said, "My name is 'Ted.'" I said, "What is your real name?" And he said, "Theodore Robinson." Then I asked him—I told him he was under arrest and he said, "For what?" I said, "Well, you are supposed to be wanted for killing two people on the south side." I asked him did he know anything about it. He said, "No, I don't know what you are talking about." So then I asked him where he lived and he said, "I don't live no place."

I said, "What do you mean you don't live no place?" He said, "That's what I said."

So then pretty soon asked him again and he said, "Some-[fol. 137] times I stay with my mother." And I said, "Where does she live?" He said, "Some address on East 44th Street."

So then we took him on to the 27th District and while we were making the arrest slip, asked him again his address and he said he lived at 7320 South Parkway. That's about all he said. He didn't know anything about any killing or anything.

Q. Now, I will show you what I will ask to have marked People's Exhibit 3 for identification which is a navy blue regular length overcoat.

(Thereupon said item was marked People's Exhibit No. 3 for identification.)

And I will ask you if you have seen that overcoat before?

A. This one? Yes, I did.

Q. And where and when did you see it?

A. I saw it shortly after, I imagine about an hour or an hour and a half after we had arrested Ted.

Q. And where did you see it?

A. We got it from the apartment.

[fol. 138] Mr. Carey: Objection.

The Witness: Where did I see it?

Mr. Conley: Just wait.

The Court: You may state where you saw it.

The Witness: I saw it in Robert Moore's apartment in the closet.

By Mr. Conley:

Q. And who was present in the room when you saw the coat?

A. Well, Robert Moore's wife, Robert Moore, and Officer Creed.

Q. And did you have a conversation with Robert Moore with regard to the coat?

A. Yes, we did.

Q. Now, I will show you what I will ask to have marked People's Exhibit 4 for identification.

(Thereupon said item was marked People's Exhibit No. 4 for identification.)

And ask you if you have seen that before?

A. The hat?

Q. Yes, the hat?

A. Yes, I did.

Q. It is a brown hat, felt. Where did you first see that?
[fol. 139] A. I saw it in Robert Moore's apartment in the closet.

Q. When?

A. About an hour and a half after Theodore's arrest.

Q. Would that be approximately the same time you saw the coat?

A. It was at the same time.

Q. And what if anything unusual did you find about the coat?

A. Well, we found a .25 Colt automatic wrapped in a white handkerchief on the inside pocket of the topcoat.

Q. Would that be an automatic pistol?

A. Yes, it was a Colt pistol, that's right.

Q. And what did you do with the coat and the hat and pistol after you found them in Robert Moore's apartment?

A. We took them back out into the car where Ted was and we asked him.

Q. Who else was there besides Ted?

A. Officer Williams, Officer Creed and myself.

Q. Now, I will show you what I have asked to be marked People's Exhibit 1 for identification and ask you if you [fol. 140] have seen that before?

A. Yes, I have.

Q. Where did you see it?

A. I first saw it when we took it out of his coat pocket here.

Mr. Carey: Objection as to "His", Judge.

The Court: Sustained. First of all, you took it out of the coat pocket?

The Witness: That's right.

By Mr. Conley:

Q. You took it from the pocket of the coat which is People's Exhibit 3 for identification, is that right?

A. That's right.

Q. Now, did you have a conversation with Theodore Robinson with regard to this coat which is People's Exhibit 3 for identification and with regard to this automatic pistol which is People's Exhibit 1 for identification?

A. Yes, I did.

Q. Where?

A. Out in the car in front of 141 North Wolcott.

Q. And what date was that now?

A. March 1 of this year.

Q. About what time?

[fol. 141] A. It was around seven o'clock, seven p. m., I imagine.

Q. And who was present?

A. Officer Creed, Officer Williams, Theodore Robinson and myself.

Q. And what if anything was said at that time with regard to the coat and with regard to the automatic pistol?

A. We asked Mr. Robinson if these were his clothes and he said, "Yes." And I asked him if that was his pistol and he said, "No". He said someone must have put it in his pocket. He didn't know anything about it.

Q. Did you tell him it was found in his coat?

A. I did.

Q. And he told you that someone must have put it in there, is that right?

A. That's right.

Q. And what happened after that?

A. Well, we started out to the 7th District and on our way, we questioned him about the killings. He didn't admit anything.

Mr. Carey: Objection.

The Court: Strike it out.

[fol. 142] By Mr. Conley:

Q. Did you go to the 27th District or the 7th?

A. First we went to the 27th District and then we called the 7th District and asked them if Ted was wanted out there and they said yes, and then the two detectives came from the 7th District to the 27th District and we picked him up and we picked the clothes up and then we started to the 7th District.

Mr. Conley: Your witness.

Mr. Carey: No questions.

The Court: No cross examination. Call the next witness.

Mr. Conley: You may step down.

The Court: Step down, please.

Mr. Conley: May I ask one more question, Judge, or two?

The Court: Yes.

By Mr. Conley:

Q. What did you do with the coat and pistol? You brought them to the 7th District?

A. To the 7th District, that's right.

Q. To whom did you give them?

A. I gave them to Officer Breckenridge here.

Q. Breckenridge. That is the coat, the hat and the pistol, [fol. 143] is that right?

A. That's right.

Mr. Conley: I have no further questions.

The Court: Any cross?

Mr. Carey: No questions.

The Court: No cross. Call your next witness.

(Witness excused.)

LOUIS KERFMAN, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name?

A. Officer Louis Kerfman, K-e-r-f-m-a-n.

Q. You are a police officer assigned to the 27th District, City of Chicago?

A. Yes, I am.

Q. Did you have occasion to participate in the arrest of Theodore Robinson?

A. I did.

Q. What date?

A. The 28th of February.

[fol. 144] Q. Would that be the 28th of February or the 1st of March?

A. It may have been the 1st of March.

Q. Well, do you recall where you arrested him?

A. 141 North Wolcott.

Q. How did you happen to go to 141 North Wolcott?

A. Well, we received a call to meet a police officer in the lobby of the building.

Q. And did you proceed to that address?

A. Yes, we did.

Q. What did you find when you got there?

A. Well, when we reached there, we found Officer Starr waiting in the lobby of the building.

Q. And did you have a conversation with Officer Starr?

A. We did.

Q. And what did you do after you had a conversation with Officer Starr?

A. We went up to the 13th floor.

Q. Tell us what happened, Officer?

A. Well, after Officer Starr related what he wanted us—of the police officers—

Mr. Carey: I am sorry. I can't hear you.

The Court: Little louder, please, Officer?

[fol. 145] The Witness: Yes, sir. After Officer Starr stated what he wanted the police officers for, we went up to the 13th floor and Officer Starr knocked at the door and the person come—came to the door and stated that there was some man that was on the premises that had committed a murder.

Mr. Carey: Objection, Judge, as to conversation.

The Court: Strike it out.

By Mr. Conley:

Q. What did you do after the conversation, Officer?

A. She stated that the man had left—

Mr. Carey: No.

The Court: No, you can't state it unless the defendant was there. Was he there?

The Witness: He was standing in the hallway.

The Court: How far away?

The Witness: Oh, maybe about twenty feet away or so.

The Court: Go ahead.

By Mr. Conley:

Q. What did you do after this conversation, Officer?

A. After the conversation, we seen the man in question. We placed him under arrest and took him into the 27th District.

[fol. 146] Q. Were you present when Officer Starr recovered the overcoat and the hat?

A. No, I wasn't.

Q. Where were you?

A. I resumed normal duty.

Q. And you had no conversation with the defendant or you were not present at a conversation with the defendant with regard to the coat and a gun?

A. No, I wasn't.

Cross examination.

By Mr. Carey:

Q. Officer Kerfman, you referred to 141 South Wolcott. Is that the project?

A. North Wolcott.

Q. Is that the project?

A. Yes, that's right.

Q. The means in getting to the 13th floor is by elevator?

A. Yes.

Q. Where is the apartment that you went to in reference to the elevator?

A. Oh, I would say—well, of course, it is right near the elevator. I will say approximately twenty-five, thirty feet from the elevator.

[fol. 147] Q. Do you have to make any turns in the corridor to get there or right in line? Do you understand what I mean by that?

A. I don't remember, counsel.

Q. Are there stairs there also?

A. I believe there is an exit.

Q. And do you know where the stairs are in reference to the elevator?

A. No, I don't.

Q. Do you know where the stairs are in reference to the apartment that you went into?

A. No, I don't.

Q. Now, I think you told us that the defendant—is that who you mean by Theodore Robinson?

A. Yes, sir.

Q. Indicating for the record the defendant.

You say you saw him about twenty feet away from the door, is that right?

A. No, sir, from the elevator.

Q. Twenty feet away from the elevator, and would that be further away from the door than of the apartment that you went to?

A. About the same distance.

Q. Well, how far was he away from the door of the apartment? [fol. 148]

A. Approximately twenty feet.

Q. So it is twenty feet from the elevator and he was twenty feet from the door, is that right?

A. Something like that.

Q. What was he doing when you first saw him?

A. He was standing there.

Q. Anybody with him?

A. I don't recall.

Q. Is the corridor well lighted?

A. To my knowledge.

Q. And what time of the day or night was this?

A. It was in the latter part of the evening.

Q. Now, when was the first time that you saw him in the corridor?

A. Oh, when we came off the elevator.

Q. In other words, he was on the floor before you got there?

A. Yes.

Q. And were you dressed in uniform?

A. I was.

Q. As you are now?

A. Yes.

Q. And your partner that responded to the call with you, [fol. 149] his name is what?

A. Officer Elsoos. That is his last name.

Q. Was he in uniform?

A. E-l-s-o-o-s.

Q. Was he in uniform?

A. He was, sir.

Q. What about Starr?

A. Starr wasn't in uniform.

Q. Now, when you came up there, did you have anything in your hands?

A. No, sir.

Q. No guns or anything of that nature, is that correct?

A. Not at the time that we hit the floor, no.

Q. Now, before you got to the door, did you take out any guns?

A. Yes.

Q. Now, from where Theodore Robinson was and the door to the apartment, is there anything that obstructs the view?

A. To my knowledge, no.

Q. Is it then in a straight line as you were at Moore's—that is Moore's apartment, is that correct?

[fol. 150] A. Yes.

Q. When you were at Moore's apartment door, could you still see Theodore Robinson?

A. Yes.

Q. What did he do?

A. Just stood there.

Q. Looking at you?

A. No.

Q. Which direction was he facing?

A. I believe he had his back to us.

Q. Anything unusual about him, the way he was dressed?

A. Not to my knowledge, no.

Q. Now, did you talk to him at any time before you went to Moore's door?

A. No.

Q. Did he have to pass in front of you to go to the elevator or by you?

A. No.

Q. Did he have to pass near you or by you to go to the stairs?

A. I don't recall where the stairs were or located at.

Q. That's right. After you went to the apartment, did [fol. 151] you stay at the door of the apartment or did you go in?

A. No, we stood at the door.

Q. Now, did anybody go in the apartment?

A. As I recall, Officer Starr did.

Q. And you two stayed outside?

A. Yes, we did.

Q. You didn't talk to Robinson at that time?

A. No, we didn't.

Q. And he still stayed where he was?

A. Yes.

Q. How long did you spend at the apartment door, would you say?

A. Well, not very long.

Q. Well, to the best of your recollection, couple of minutes?

A. Possible.

Q. And then you walked towards Robinson?

A. As I remember, yes.

Q. Would that be in the same direction as towards the elevator?

A. It would be.

Q. Did you have to pass the elevator to go to Robinson?
[fol. 152] A. No.

Q. Now, when you came up to him, was he still facing away from you?

A. No, he turned around then, as I recall.

Q. And faced you?

A. Yes.

Q. And did he remain standing?

A. He did.

Q. And you went up to him, isn't that correct?

A. That's correct.

Mr. Carey: No further questions.

The Court: Re-direct?

Mr. Conley: No re-direct.

The Court: Call the next witness, please.

(Witness excused.)

Mr. Conley: Officer Breckenridge. You have been sworn, haven't you?

The Witness: I have.

[fol. 153] ROBERT BRECKENRIDGE, a witness called on behalf of the People, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. Robert Breckenridge.

Q. How do you spell your last name?

A. B-r-e-c-k-e-n-r-i-d-g-e.

Q. What is your business or occupation?

A. Police officer.

Q. And what district are you assigned to?

A. The 7th District, Woodlawn.

Q. Were you so assigned on or about the 28th of February, 1959?

A. I was.

Q. Did you have occasion to investigate the death of Flossie Ward?

A. I did.

Q. And at what time?

A. This was about 10:30 p. m., February 28, 1959.

Q. Where if any place did you go?

[fol. 154] A. 1035 East 63rd Street.

Q. And would you describe what you saw and heard when you got there?

A. I saw two persons laying on the sidewalk upon my arrival. Two wagons were also there at this establishment.

Q. Of what sex were these persons?

A. One was male and one was female.

Q. And who if you know is the female person?

A. The female I learned was an employee of this establishment.

Q. The name?

A. Flossie May Ward.

Q. And what did you do then?

A. Told the wagon men—

Mr. Carey: Objection to conversation.

The Court: Sustained.

By Mr. Conley:

Q. Where were these persons taken, if you know?

A. They were taken to the Woodlawn Hospital.

Q. And did you have any conversation with anybody in the restaurant at that time before you went?

A. None other than learning the identification of the individuals that we had seen.

[fol. 155] Q. I am sorry, I didn't hear the last part of your answer.

A. None other than learning the identification of the individuals that we had seen.

Q. Did you learn the identity of the person who had done the shooting?

Mr. Carey: Objection. That would be just his conclusion.

The Court: Yes, sustained.

By Mr. Conley:

Q. And where did you go then, Officer?

A. You mean after leaving or going into the restaurant?

Q. First of all, what if anything did you find in the vicinity?

A. In the vicinity, we recovered one spent shell or casing.

Q. I will show you what I have asked to have marked People's Exhibit 2 for identification. It is a small white box containing a small shell casing, and I will ask you if you have seen that before?

A. Yes, I have seen that before.

Q. And where did you see it?

A. I saw this at the location of 1035 East 63rd Street.

[fol. 156] Q. And I will show you People's Exhibit 1 for identification which is a .25 caliber automatic pistol and I will ask you if you have seen that before?

A. I have.

Q. Where and when was the first time you saw that?

A. I saw it March 1, 1959, on the second floor of the Woodlawn police station at 6344 South Harper Avenue about 8:00 p. m., around that time.

Q. From whom did you receive it?

A. I received it from Officers Starr, Creed and Williams who gave it to me.

Q. Were you present at any time at a showup in which the defendant was?

A. I was.

Q. And do you recall what date that was?

A. That was the same date that I had just stated.

Q. And what date was that?

A. March 1, 1959.

Q. And what time of the day?

A. Oh, the showup must have been around—somewhere between 9:00 and 10:00 p. m. on that day.

Q. And where?

A. Second floor, 6344 South Harper, the Woodlawn [fol. 157] police station.

Q. And who was present?

A. There was Officer Starr, Officer Williams, Officer Wiley, Officer Childress, Lieutenant Noonan, and there was a Maxine Butler who had been notified to be there. There was Jimmy Hackman. There was Miss Neddie Batts, and possibly one or two others that I don't recall just now.

Q. And you heard the other witnesses testify that there were five men in the lineup, is that right?

A. Yes.

Q. And what if anything did anybody say or do at that time?

A. The witnesses that we had were asked to point out a man that is supposed to have been known to them as Ted.

Q. What happened?

A. The three witnesses pointed Ted out.

Q. What did they say? As I understand, Ted was there and could hear them.

Mr. Carey: Objection, Judge, unless it is in the presence of the defendant and I know he was there, but just how close he was to them, if he could hear—

[fol. 158] The Court: Show the distance.

By Mr. Conley:

Q. Was Ted in the lineup?

A. Yes, he was.

Q. How far away were these witnesses from Ted at the time they spoke?

A. As I recall, the two female witnesses were reluctant to get close to Ted.

Mr. Carey: Objection and move to strike it out.

The Court: Strike that out.

By Mr. Conley:

Q. About how many feet each one, if you can recall?

A. They were no more than from ten to fifteen feet away.

Q. And how far was Jimmy from the defendant?

A. Jimmy was the same distance at that time of the showup.

Q. And by the two female witnesses, whom do you mean?

A. Maxine Butler and Neddie Batts.

Q. And what did Neddie say?

A. She said that that was Ted, pointed him out.

Q. What did Maxine say?

A. Same thing.

Q. What did Jimmy say?

[fol. 159] A. Same.

Q. Now, at the time you got this gun which is People's Exhibit 1 for identification, did it have the clip in there?

A. Yes, it did, when I received it.

Q. I am removing the clip now. Was the clip loaded or unloaded and if loaded, how many shells were in it?

A. As I recall, there was one live shell in the gun.

Q. I will ask you if you have ever seen what I will ask to be marked People's Exhibit 5 for identification before?

(Thereupon the said document was marked People's Exhibit No. 5 for identification.)

This would be a green envelope approximately seven inches by three and a half inches.

A. Yes, I have seen it before.

Q. And where did you first see it?

A. In the Woodlawn police station about noon on the 1st of March, 1959.

Q. And this is marked "Coroner's Bullet File", "Bullet Envelope".

[fol. 160] A. Yes, it is.

Q. With "Flossie Mae Ward", "Dr. George Goldenberg, Coroner's Physician", is that right?

A. Yes.

Q. I will show you these initials appearing on the lower right-hand corner and I will ask you if you know whose signature is on that?

A. Those initials are mine.

Q. Who put them on there?

A. I placed them on there.

Q. When?

A. On the date on the envelope, March 1, 1959, at the time I received the envelope.

Q. And was this envelope sealed or unsealed when you received it?

A. It was sealed at the time I received it.

Q. What if anything was in it, if you know?

A. I didn't open the envelope. I initialed it.

Q. Did you feel it?

A. I could feel some hard object in it.

Q. What did you do with the envelope then after you received it?

A. Later I took the envelope to the Police Crime Laboratory at 1121 South State Street.

[fol. 161] Q. And you left it there, is that right?

A. Yes, I did.

Mr. Conley: I will ask that this small white box—

The Court: Is that the envelope and the contents?

The Witness: The envelope and its contents, your Honor.

Mr. Conley: I will ask that this small white box be marked People's Exhibit 6 for identification.

(Thereupon said item was marked People's Exhibit No. 6 for identification.)

By Mr. Conley:

Q. I will ask you if you have ever seen this small white box before, Officer?

A. I have.

Q. Where was the first time you saw it?

A. The first time I saw the white box was at the Crime Laboratory at 1121 South State Street.

Q. And when? Would that be the 2nd of March, 1959?

A. No, I don't believe it was the 2nd. If my memory serves me well, I took that same white box that you have in your hand to a Coroner's inquest.

Q. Have you got a record of it when you received it, Officer, in the file you hold in your hand?

[fol. 162] A. No, but they have the record at the Crime Laboratory when I took it out.

Q. But you did receive it from the Crime Laboratory, is that right?

A. Yes, I did.

Q. And for the record this box contains a small leaden pellet. And what did you do then with People's Exhibits 1 and 2, 1 being the pistol and 2 being the shell casing after you received it?

A. I took them to the Crime Laboratory at 1121 South State Street.

Q. And you turned them over to the Crime Laboratory, Officer?

A. I did.

Q. And did you bring them to court today?

A. I beg your pardon?

Q. Did you bring them to court today?

A. Yes.

Q. To be used as evidence?

A. Yes, I did.

Q. Where did you pick them up from?

A. They were picked up at the Police Crime Laboratory.

Mr. Carey: Objection.

[fol. 163] The Court: What is the objection?

Mr. Carey: The question is, "Where did you pick them up" and the answer is, "They were picked up", which would indicate to me that it was someone else who picked them up.

The Court: They were picked up. He refers to Exhibits 1 and 2.

Mr. Carey: The question is, "Where did you pick them up" and he said, "They picked them up".

The Court: Read it.

(The record was read by the Reporter.)

The Court: They were picked up. By you, sir?

The Witness: No.

The Court: Objection sustained. Strike it out.

By Mr. Conley:

Q. By whom? Do you know who picked them up from the Crime Laboratory?

A. Yes, I do.

Q. Who?

A. My partner.

Q. What is his name?

Mr. Carey: Objection, Judge.

The Court: Sustained.

Mr. Carey: I ask that it be stricken.

The Court: Strike it out unless you can show he was [fol. 164] with his partner when they picked them up. Were you with him?

The Witness: No, I was here.

The Court: Then you don't know who picked them up.

The Witness: I don't know.

The Court: All you know is when you saw them, your partner had them. You don't know whether he picked them up or someone else.

The Witness: True.

The Court: All right.

By Mr. Conley:

Q. Did you get these from your partner?

A. Yes.

Q. And what is your partner's name?

A. His name is Frank Edwards.

Q. And what about People's Exhibits 5 and 6, did you bring them to court today?

A. I did.

Q. Where did you get them from?

A. I had them in my possession since yesterday from the same officer that I received the Exhibits 1 and 2.

Q. That is Officer Frank Edwards?

A. Yes, it is.

[fol. 165] Q. By the way, after you left the location of this restaurant, where did you go?

A. I went to the Woodlawn Hospital.

Q. And what happened there?

A. There I tried to communicate with the two persons that I saw there that—at the hospital.

Q. Were you present—

Mr. Carey: I am sorry. The train drowned it out. May I have it read?

The Court: Read it, please.

(The answer was read by the Reporter.)

By Mr. Conley:

Q. Did you succeed in communicating with them?

A. No, I received no response.

Q. Were you present when the doctor was there?

A. Yes.

Q. And what happened then?

A. I had a conversation with the doctor.

Q. Were you there when the doctor pronounced them dead?

A. Yes.

Mr. Carey: Objection.

The Court: Sustained.

Mr. Conley: I have no further questions.

[fol. 166] The Court: Cross examine.

Cross examination.

By Mr. Carey:

Q. Officer Breckenridge, you said something about finding a cartridge or a casing. Is casing a proper term?

A. Yes.

Q. At 1035 East 63rd Street, is that correct?

A. Yes.

Q. Did you find that yourself?

A. I was there when it was found and was given to me by one of the other officers.

Q. In other words, someone handed it to you, is that correct?

A. No. The discovery of the casing—

Q. Just answer my question. The answer is that it was handed to you, is that correct?

A. That is correct.

Q. By who?

A. I am not sure, one of the other officers.

Q. Was that the first time you had ever seen it?

A. The casing?

Q. Yes.

A. No, I was told that there was—

[fol. 167] Q. No, is that the first time you had ever seen the casing is when it was handed to you?

A. No, I knew it was there, one of them to see the casing. No one wanted to assume the responsibility of the case.

Q. Then you had seen it before it was handed?

A. Yes.

Q. Where was it?

A. Behind the counter at 1035 East 63rd Street near the east wall in the aisle.

Q. Now, did I understand you correctly when you said that all the exhibits, namely the pellet—is that what you call that, the leaden pellet in the box?

A. Yes.

Q. And the casing which was in the box, in the white box, and the gun were delivered to the Crime Laboratory by you?

A. Yes, they were.

Q. And that you went to the Crime Laboratory sometime after you delivered them and took one of them out, is that correct?

A. No, I don't understand you, your question.

Q. Well, you delivered these things to the Crime Lab- [fol. 168] oratory, right? Did you take these to the Crime Laboratory?

A. Yes.

Q. And then your partner gave them to you yesterday?

A. No. You misunderstood. Let's go back over this again. The three items, the three different exhibits were taken at three different various times.

Q. All right, which exhibit did you take first?

A. The casing which I don't think you have there, do you?

Q. Is this it here?

A. Yes, it is. That was taken separate from the other two.

Q. That's People's Exhibit 2 for identification?

A. Yes.

Q. This one was taken first?

A. This was taken prior to the taking of the pellet and the taking of the gun.

Q. Now, the gun is People's Exhibit 1 and the pellets are People's Exhibit 6, both for identification, is that correct?

A. The gun is 1. This is 6.

Q. Right?

[fol. 169] A. Right.

Q. Now, did you say that you went to the Crime Laboratory and took something to the—and took something from them and took it to an inquest?

A. Yes.

Q. And what was that?

A. As I recall, I had a gun at the inquest and I am not sure presently whether I took the pellets because they might have been still under consideration. I don't remember.

Q. I see, and did you personally return what you took to the Crime Laboratory?

A. Oh, yes.

Q. Back to the Crime Laboratory?

A. Yes, personally, yes.

Q. Now, Officer, while you have been testifying, you have been refreshing your memory as to things with files, is that correct?

A. Not exactly. I wanted to take out something that I could show you to give you a definite time as to when I took them to the Crime Laboratory, which I have found.

Q. You have in your hand a Manila envelope which I would like the Reporter to mark Defendant's Exhibit 2 [fol. 170] for identification.

Mr. Conley: Objection, your Honor.

The Court: Overruled. It may be marked for identification. The Officer handed it to him.

(Thereupon said document was marked Defendant's Exhibit No. 2 for identification.)

By Mr. Carey:

Q. Now, Defendant's Exhibit 2, are those your reports and notes you made at the time of your investigation?

A. It is.

Q. And did you make them personally?

A. This report?

Q. Yes.

A. I did.

Q. And did you have occasion to examine them after you made the report, after you made these?

A. Yes, I did.

Q. And when is the last time you had occasion to look at them?

A. At my report?

Q. Yes.

A. Oh, let's see, an hour ago.

Q. And that was prior to your taking the stand, is that [fol. 171] correct?

A. True.

Q. And things in this report refreshed your present recollection as to things, of dates and times and what was said, isn't that correct?

A. Not exactly, no, that is not correct, because in the file, the Manila folder that you have in your hand, I had the reports from the Laboratory which I didn't look at prior to this morning.

Q. This is your own file, is that correct?

A. That is correct.

Q. Do you have any objection if I look at it?

A. I have no objection.

Mr. Carey: Do you have any objection?

Mr. Conley: I object, your Honor.

The Court: Objection overruled.

Mr. Carey: Judge, it is quite bulky and may I look at it later and finish with the cross examination of this witness subject—

The Witness: I would rather, your Honor—I mean that is a police file of mine that I did make. I would—I don't mind waiting while counsel looks at things but there is Police Department material other than what actually has been testified to.

[fol. 172] The Court: Is that entire file concerned with this case?

The Witness: That is the entire file I have compiled pertaining to this case.

The Court: You handed it.

The Witness: He said he wanted to look at it. I have nothing to conceal in the file.

The Court: Well, you look at it in the presence of the officer and return it to him.

Mr. Carey: Very fine.

The Court: Continue your cross examination.

Mr. Carey: I have no further cross examination until such time I have had occasion to look at it.

The Court: Is that all today?

Mr. Conley: That's all.

(Witness excused.)

Mr. Carey: Judge, one thing has occurred that may be—to only clarify this matter, with Officer Starr who I had cross examined; I would like to call him back for just a couple of questions rather than bring him back as my witness.

The Court: You are going to have him back here tomorrow, aren't you?

Mr. Conley: Yes.

[fol. 173] The Court: You can put him on as rebuttal. Recess until 10:00 o'clock tomorrow morning. Good night.

(Thereupon said cause was recessed until the following day, Wednesday, September 16, 1959, at 10:00 o'clock a. m.)

[fol. 174]

THE PEOPLE OF THE STATE OF ILLINOIS,

VS.

THEODORE ROBINSON.

Indictment No. 59-703

Before Judge Daniel A. Covelli.

Wednesday, September 16, 1959,
10:00 o'clock a. m.

Court met pursuant to adjournment.

Present: Mr. Robert M. Conley, Assistant State's Attorney, on behalf of the People;

Mr. Warren J. Carey and Mr. Harold E. McDermid, on behalf of the Defendant.

The Clerk: Theodore Robinson.

Mr. Conley: We are ready to proceed, Judge.

The Court: Proceed.

Mr. Conley: I would like to recall to the stand Officer Breckenridge.

The Court: Call Officer Breckenridge.

[fol. 175] ROBERT BRECKENRIDGE, a witness recalled on behalf of the People, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, sir?

A. Robert Breckenridge.

Q. And you are a police officer of the City of Chicago, is that right?

A. I am.

Q. Are you the same Officer Breckenridge who testified yesterday?

A. I am.

Q. And you realize you are still under oath?

A. I do.

Q. Now, Officer, you testified that you arrived at the scene of this shooting at 1035 East 63rd Street on February 28, 1959, is that correct?

A. I did.

Q. Is that in Chicago, Illinois?

A. It is.

Q. Now, you testified, Officer, that when you received the gun which was People's Exhibit 1 for identification, [fol. 176] there was a clip inside of it in which there was one unspent cartridge, is that correct?

A. Yes, I testified to that.

Q. And what did you do with that cartridge?

A. That cartridge I kept with the gun and took it to the Crime Laboratory on March 2nd.

Q. And what happened to it after that, if you know?

A. I don't know after I took it to the Crime Laboratory. I received a receipt for it and I left it there.

Q. And did you bring it to court today?

A. I did.

Q. Who picked it up from the Crime Lab, if you know?

Mr. Carey: Objection.

The Court: If he knows.

Mr. Carey: Oh, excuse me.

The Witness: The gun has been in my possession since the court trial began. However, originally as I stated yesterday, my partner Frank Edwards brought the gun from the Crime Lab over to the courtroom for me to have in evidence.

[fol. 177] By Mr. Conley:

Q. What about the unspent cartridge? How did that get here?

A. The unspent cartridge was also in an envelope that was brought over with the gun.

Q. And have you got that cartridge with you, the loaded unspent cartridge?

A. I do have, yes.

Mr. Conley: I will ask to have this unspent cartridge which is a .25 caliber—

The Witness: I believe it is .25 caliber.

Mr. Conley: —.25 marked People's Exhibit 7 for identification.

The Court: Mark it, please.

(Thereupon said item was marked People's Exhibit No. 7 for identification.)

By Mr. Conley:

Q. And you brought the cartridge, the unspent cartridge which is People's Exhibit 7 for identification to court to be used as evidence in this case, is that right?

A. I did, yes, sir.

Mr. Conley: I have no further questions.

The Court: Cross examine.

[fol. 178] Cross examination.

By Mr. Carey:

Q. Are you familiar with the type of gun that you have here in court, the .25 caliber?

A. Would you repeat that for clarification?

Q. Are you familiar with this type of a gun, and I am referring to People's Exhibit 1 for identification?

A. You mean the operation?

Q. Yes.

A. Oh, I am not too familiar with the operation of automatic type guns.

Q. Do you know how many cartridges this holds?

A. I couldn't state how many cartridges that gun holds, no.

Q. O. K. The cartridge which was given to you, People's Exhibit 7 for identification, was in the gun?

A. Yes.

Q. And in the chamber?

A. It was in the chamber when it was given to me at the 7th District station, yes.

Q. And this is a gun that ejects cartridges, is that correct, the casing?

[fol. 179] A. Most automatic type guns I have read and have been told do eject their shells.

Q. Do I understand you, Mr. Breckenridge, that from the time that you deposited these items with the Crime Laboratory, with the exception of your taking one out for the Coroner's inquest, that these were with the Crime Laboratory, as far as you know?

A. Oh, yes. Yes, I say from—

Q. Until you picked them up at the beginning of this week or Tuesday?

A. No. On other occasions wherein we were to go to trial I had—rather had taken the items from the Crime Laboratory and brought them to court. However, by the continuance of the case, they were returned or—

Q. They were returned then to the Crime Laboratory?

A. Were returned or in my possession.

Q. Now, Mr. Breckenridge, you talked about something yesterday.

I had concluded my cross examination yesterday, subject to reading the reports of Mr. Breckenridge. So I am going more than what was brought out on re-direct.

Mr. Breckenridge, you talked something about a showup [fol. 180] being conducted on the 2nd or 3rd of March, 1959, is that correct?

A. March 1, the showup was.

Q. And there were how many men in this lineup?

A. There were five men in the lineup.

Q. How many—do you know who they were?

A. I believe I could recall the names of two or three of the men.

Q. All right, would you give me the names of two or three?

A. One name was Claude Wiley.

Q. Now, he is a police officer assigned to the 7th District, is that correct?

A. That is correct.

Q. And was he in or out of uniform at that time?

A. He was out of uniform.

Q. And will you tell us something about his appearance? How tall is he?

A. I would say between five-nine or five-eight to five-ten.

Q. How much does he weigh?

A. 160, I imagine.

Q. And did he wear glasses?

A. No, he doesn't.

[fol. 181] Q. And what about his complexion?

A. Medium brown skin.

Q. Is he a Negro gentleman?

A. Yes, he is.

Q. Does he look like the defendant in your opinion?

(Thereupon a discussion was had between Court and counsel outside of the hearing of the witness and court reporter.)

By Mr. Carey:

Q. And the other men in the lineup were also policemen, is that correct?

A. That I can't definitely state.

Q. But the two or three you remember would be policemen, is that correct?

A. Two definitely that I recall as being policemen. The others I believe could have been taken from the lockup downstairs.

Mr. Carey: There will be no further questions.

Mr. Conley: You may step down.

The Witness: Thank you.

(Witness excused.)

Mr. Conley: Will you get Simons?

The Court: Were you sworn?

The Witness: No.

[fol. 182] The Court: Swear this witness, please, Mr. Clerk.

KASMIR SIMONS, a witness called on behalf of the People, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. Kasmir Simons, K-a-s-m-i-r Simons, S-i-m-o-n-s.

Q. What is your address?

A. 10960 Church Street, Chicago 43, Illinois.

Q. Where are you regularly employed?

A. I am assigned to the Chicago Police Scientific Crime Detection Laboratory and I am assigned to the firearms identification section.

Q. What schools have you attended?

A. Morgan Park High School.

Q. How long have you been on the Chicago police department?

A. 30 years.

Q. And have you any experience with regard to firearms and their use?

A. Firearms has been my hobby for more than 30 years. [fol. 183] I have done considerable hand loading, numerous calibers.

Mr. Carey: Objection.

The Court: You have answered the question. Is that your objection? What is the objection?

Mr. Carey: The objection is that he is giving his conclusion, his considerable time in reloading and so forth.

The Court: Sustained. Just give the facts instead of conclusions.

By Mr. Conley:

Q. Just what is your experience with regard to firearms, Mr. Simons? Have you ever conducted experiments and what kind and how many?

A. Yes, I have. I have done considerable hand loading in various calibers and I have conducted experiments using various components and loading methods necessary to produce accuracy in these various calibers. I have been range officer for the Police Training Division for the Chicago Police Department and I have given instructions in the use of the revolver, the shotgun and sub-machine guns. I have been an active competitor in many revolver, rifle and shotgun matches. I have attended the matches at Camp Perry, and I hold a certificate as a qualified instructor in

[fol. 184] small arms issued by the United States Army.

Q. And what if any books or works have you studied on the subject?

A. I have in my personal library such standard literature on firearms and firearms identification as "Firearms Investigation, Identification and Evidence", by Julian S. Hatcher, "The Identification of Firearms" by Gunther and Gunther, "The Identification of Firearms and Forensic Ballistics" by Major Gerald Burrard. I have the NRA textbooks on rifles and pistols. I have numerous other firearm books in my library. I have kept abreast of current developments in the field of firearms identification by reading the police science section of the Journal of Criminal Law and Criminology and the American Rifleman.

Q. Have you ever observed the manufacture of firearms or munitions?

A. I have observed the manufacture and operations at the Western Cartridge Company at East Alton, Illinois, the Remington Cartridge Company at Bridgeport, Connecticut, the Winchester Cartridge Company at New [fol. 185] Haven, Connecticut, Federal Cartridge Company at Minneapolis.

I have observed the manufacture of firearms and gun barrels at the Harrington & Richardson Revolver Company at Worcester, Massachusetts, Smith & Wesson Revolver Company at Springfield, Massachusetts, Colt Patent Fire Arms in Hartford, Connecticut, Winchester Repeating Arms, O. E. Morsberg at New Haven, Connecticut.

Q. Now, what are your particular duties at the Chicago Police Crime Detection Laboratory?

A. My duties are to receive and make detailed examination of firearms evidence such as various weapons, bullets and cartridge cases that are submitted by the department and I am expected to render a report of my findings.

Mr. Carey: Objection.

The Witness: And I render—

The Court: Overruled. Go ahead, please.

The Witness: This examination of weapons consists of the determination of the caliber, in other words, class and individual characteristics. I fire test shots from weapons submitted and by the use of the comparison microscope determine whether or not weapons submitted are involved.

[fol. 186] I do this work eight hours a day, nothing else but just firearms work.

By Mr. Conley:

Q. And how long have you been doing that particular kind of work?

A. Since 1947.

Q. Can you give us a description of what you call a comparison microscope and how it operates?

A. Comparison microscope consists of two microscopes equipped with matched optics. The microscopes are placed side by side and they are connected with a comparison bridge. The microscopes are equipped with separate stages for the handling of bullets and cartridge cases and with proper illumination.

When an operator looks through this instrument, he observes a split field. In the left half of the field of view, he sees the object placed under the left microscope, and in the right half he sees the object placed under the right microscope. In making a comparison of two bullets on this instrument, the bullets are placed under each microscope and one bullet is rotated until a point of similarity is observed. And then both bullets are rotated simultaneously and the fine marks or striations are studied and observed if they coincide from one bullet to the other at the [fol. 187] point where the field is split.

In examining cartridge cases, the technique is similar except that firing pin indentations, breech block markings or primer and head of the cartridge case and extractor and ejector marks are studied.

Q. Now, about how many tests have you conducted on various firearms during the course of your duties at the Chicago Police Crime Detection Laboratory?

A. Oh, I have examined more than 8,000 weapons while I have been there and—

Q. About how many comparison tests have you made during the course of your duties?

A. More than 5,000.

Q. Now, Mr. Simons, I will show you People's Exhibit 1 for identification which is a .25 caliber automatic pistol and ask you if you have seen that before?

A. Yes, I have.

Q. And will you describe that pistol, please? I am not an expert. Maybe you had better say what it is.

A. This is a .25 caliber Colt autoloading pistol known as a vest pocket weapon. It has a manual safety and it has a [fol. 188] grip safety. The magazine holds six cartridges and if one is put into the chamber, it is six plus one. It is a very compact weapon. It has a barrel $2\frac{1}{8}$ inches long and it is known as a semi-autoloading pistol and the way this weapon functions is that magazine is charged with six cartridges. They are inserted into the grip of the weapon and the slide is drawn back and retracted and it comes forward under the tension of the recoil springs and it strips one cartridge from the magazine into the chamber and seats it and when the trigger is pulled, then forces the slide back and at that particular time there is a cartridge case extracted and ejected from the weapon and the slide moves forward under tension and strips another cartridge from the magazine and chambers it, ready for the second shot.

Q. Now, when did you first see that weapon, Mr. Simons?

A. On March 1, 1959, it was submitted to the laboratory.

Q. By whom was it submitted?

A. Officer Breckenridge of the 7th District.

Q. And were you present when he submitted it?

A. Yes, sir, I was.

[fol. 189] Q. I will show you People's Exhibit 2 for identification which is an empty shell casing and I will ask you if you have seen that before?

A. Yes, I have.

Q. And when did you see that?

A. The same date, March 1st, 1959, that was also submitted by Breckenridge.

Q. At the same time and place as People's Exhibit 1?

A. Yes, sir, same day.

Q. I will show you People's Exhibit 5 which is the Coroner's Bullet Envelope and I will ask you if you have seen that before?

A. Yes, I have.

Q. Where and when?

A. March 1st, 1959. This is a Coroner's Bullet Envelope and I have marked, received 3/1/59, with my initials on it, and I have my case number, and I received that envelope on that date.

Mr. Conley: Can we wait just a minute until the police officer gets something?

Q. Now, I will show you People's Exhibit 5 for identification and ask if that is the envelope you told us about? [fol.190] A. Yes. I received this envelope on March 1st, 1959. It was submitted by Officer Breckenridge.

Q. Now, what if anything was in that envelope at that time?

A. I found a .25 caliber metal tipped fired bullet. I removed the bullet from the envelope. I marked it for identification. I then processed it like I would any other—any other evidence bullet.

Q. Now, I show you People's Exhibit 6 for identification, which is a small box containing a leaden pellet and I will ask you if you have seen that before?

A. Yes, I have.

Q. Is that the pellet that you described as being in People's Exhibit 5?

A. It is, yes.

Q. Now, I will show you People's Exhibit 7 for identification which is the unspent cartridge.

A. Yes, sir, I have seen that before.

Q. Have you seen that before?

A. Yes, sir, I have.

Q. Where did you see that and when?

A. That was submitted with People's Exhibit 1, the .25 caliber auto pistol.

[fol. 191] Q. Now, Mr. Simons, did you conduct any tests on any of these exhibits?

A. Yes, I did.

Mr. Carey: Objection.

By Mr. Conley:

Q. What was the test?

The Witness: I fired two—

The Court: Overruled.

The Witness: I fired two test shots from People's Exhibit 1 into a bullet recovery box.

By Mr. Conley:

Q. What is the bullet recovery box?

A. It is a box approximately 10 by 10, about 5 feet long and one end is a telescoped end. It can be drawn in and out. One end of this box is open and it is filled with a cotton waste material and these cotton batts are arranged in this box and shots are fired into this cotton material and the tests are recovered from this bullet recovery box and also, of course, the discharged cartridge case that is expended at the same time.

Q. And did you recover the pellets that you shot into the bullet recovery box?

A. Yes, sir, I did.

Q. Did you recover the cartridge that was ejected at the time you fired these test shots?

[fol. 192] A. Yes, I did.

Q. Have you got those pellets and cartridge cases with you?

A. Yes, sir, I have.

Q. May I see them?

I will ask that this small white box which contains two leaden pellets and two empty cartridge cases be marked People's Group Exhibit 8 for identification.

(Thereupon said items were marked People's Group Exhibit No. 8 for identification.)

Now, do you know who put this writing on the box?

A. That is my writing, yes.

Q. And what tests did you conduct? That is, what comparison tests if any did you conduct?

A. I first took my two test bullets and placed them under a microscope and I brought them into what I call a matched position. I could see that—brought them in a position where the striations and the fine markings coincide from one bullet to the other. Then I removed one of the test shots and I placed under the microscope a fired bullet, Exhibit [fol. 193] 6, which I took from the Coroner's Envelope and I made a comparison examination.

Then I took the two test cartridges, made a comparison examination, and then I removed one and I placed People's Exhibit 2 which is a discharged .25 caliber cartridge casing and I made a comparison examination.

Q. What is your opinion, Mr. Simons, based on your experience as to the weapon that fired both the People's Exhibit 2—I mean People's Exhibit 4 which is the pellet, People's Exhibit 2 which is the empty shell casing and People's Group Exhibit 8?

Mr. Carey: Objection.

The Court: Sustained. Objection sustained.

The Witness: On the—

The Court: No, objection has been sustained.

By Mr. Conley:

Q. Now, Mr. Simons, did you compare the two empty shell casings that are part of People's Group Exhibit 8 with the empty shell casing which is People's Group Exhibit 2?

A. Yes, I did.

Q. And what is your opinion as to what weapon they were fired from?

[fol. 194] Mr. Carey: Objection.

The Court: Overruled.

Mr. Carey: Judge, I am objecting on the man's qualifications as an expert, as I heard the testimony; if I may be heard on that.

The Court: Yes.

Mr. Carey: As I have the testimony, he is a graduate of Morgan Park High School, he has as a hobby firearms, that he was once a range officer for the City of Chicago, that he has gone to rifle matches of the United States Army, that he has in his library several books, one by Hatcher, one by Gunther and Gunther, and one by Burrard, that he has made 5,000 tests of pellets and 8,000 examinations of guns. Outside of that, we have nothing which would indicate what the tests were. Whether he has the books, the evidence that he has read them or anything which would indicate or that would qualify him as an expert.

I submit to the Court, I could have done all of these things, graduated from high school, have firearms as a hobby and been a range officer and still not be an expert and still have all of these things; and I understand there are some attorneys in the building who have all of these books [fol. 195] and still are not experts and still have made tests. I submit to the Court that this man is not qualified to give his opinion as to the comparisons.

Mr. Conley: Your Honor, there were quite a bit more qualifications than that. This witness has worked for 27 years with the Chicago police department and has conducted thousands of tests. Regardless of what books are in a man's library, he has conducted thousands, at least 5,000 comparison tests. He certainly should be considered an expert in that field.

The Court: Objection overruled. Answer it. Answer the question.

Mr. Conley: Will you read the last question?

(The question was read by the Reporter as follows: "And what is your opinion as to what weapon they were fired from?")

The Witness: It is my opinion based on similarity of class and individual characteristics that the discharged cartridge case, People's Exhibit 2, was discharged in the .25 caliber pistol, People's Exhibit No. 1.

[fol. 196] By Mr. Conley:

Q. And have you an opinion as to People's Exhibit 6?

A. Yes, I have.

Q. What is that opinion?

A. On the basis of similarities of class and individual characteristics, it is my opinion that the fired .25 caliber bullet, People's Exhibit 6, was fired from the .25 caliber Colt auto pistol, People's Exhibit 1.

Mr. Conley: You may cross examine.

Cross examination.

By Mr. Carey:

Q. What are your hours of duty, Mr.—

A. From 8:00 to 4:00.

Q. Is that every day?

A. Yes. Not every day. For many years, it was 48 hours a week and now it is 40. Sometimes I work longer.

Q. Well, what are the hours? Do you have regular days that you work, all day, to Friday?

A. Yes, I work Monday through Friday and if I work a little overtime, well, I am compensated for it.

Q. Are those the days you work, Monday through Friday?

[fol. 197] A. On Saturdays, if there is something that comes in, I will work, and Sunday.

Q. Now, is Sunday generally your day off?

A. As a rule, work lesser on Sunday, it has been. Prior to that, we worked seven days—

Q. When was the last Sunday that you worked?

A. I wouldn't remember. I couldn't recollect.

Q. Well, was it within the last year?

A. It may have been.

Q. You don't know? Was it within this year?

A. Could have. I don't recall with any accuracy.

Q. Now, you have given us your opinion, Mr. Witness, in reference to these exhibits. And do you base your opinion upon your experience as a firearms expert and being a range officer and having seen these various gun factories and books you have in your library and so forth? Is that what your opinion is based upon?

A. My—

Q. And the comparison of the pellets under the microscope?

A. Yes. My opinion is based on the amount of work I have done on this. There isn't a recognized school in firearms identification that a person can attend. This is strictly [fol. 198] more a skill than it is any dark science and all that in reality is that you compare are the tool marks that are the individual characteristics that are engraved on a bullet from the rifling of the weapon. And the cartridge case, it is the firing pin indentation, and there are no two things exactly alike in this world. The firing pin has its own individual little markings, and it is like if I took a pencil and dropped it into something soft. It has that individual marking and it really, I would say, is a skill, and I have done it for many years. In fact, I have my own comparison microscope at home. I don't have many other hobbies. Firearm just happens to be that.

Mr. Carey: No further questions.

The Court: Any redirect?

Mr. Conley: No redirect.

The Court: You are excused, sir. Call another witness.

(Witness excused.)

The Court: Have you been sworn, sir?

The Witness: No, I haven't.

The Court: Swear the witness, Mr. Clerk.

[fol. 199] FRANK EDWARDS, a witness called on behalf of the People, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Conley:

Q. What is your name, please?

A. Frank Edwards.

Q. And your business or occupation?

A. Police officer, 7th District, Chicago police.

Q. You are the partner of Officer Breckenridge, is that right?

A. That's right.

Q. Now, calling your attention to the exhibits in this case, did you pick them up from the Crime Laboratory?

A. Yes, I did.

Q. And who was present when you picked them up?

A. Well, in the Crime Lab, I got these three white boxes containing pellets and Officer Benz turned them over to me at the Crime Lab.

Q. Was Mr. Simons present at the time?

A. Yes, he was.

Q. And what did you do with the boxes at that time?

[fol. 200] A. I brought them directly over here and I gave them to Officer Breckenridge.

Q. Was the gun also in this group?

A. I was given some envelopes at the Custodian's office but I didn't examine the contents of the envelopes.

Q. I will show you a brown Manila envelope and I will ask you if you have seen that before?

A. Yes, I have.

Q. Is that the envelope that you picked up at this time that you are telling us about?

A. Yes, I did.

The Court: What exhibit is that?

Mr. Conley: We will ask to have that marked People's Exhibit 9.

(Thereupon said document was marked People's Exhibit No. 9 for identification.)

By Mr. Conley:

Q. How do you know it is the same envelope that you picked up?

A. Well, by the markings here. (Indicating) The number was in the same place and it had the same markings on it that are on it now; the markings also I notice now, [fol. 201] and I guess it is a case number.

Q. And it is the inventory number stamped on it, is that right?

A. Yes, yes.

Q. And you turned these over to Officer Breckenridge?

A. That's right.

Mr. Conley: Your witness.

Mr. Carey: No questions.

The Court: Step down.

(Witness excused.)

STIPULATION AS TO PEOPLE'S EXHIBITS 1 THRU 8

Mr. Conley: Your Honor, we have one other witness, Dr. Goldenberg, from the Coroner's office. I understand he left his home about 9:00 o'clock this morning to come to the Criminal Court here and as yet I haven't seen him. I expect him momentarily.

The Court: Can you stipulate?

Mr. Carey: I agreed to stipulate, Judge. If you will remember, at the beginning I said I will stipulate to the protocol of the Coroner, and I am still willing to do that.

Mr. Conley: Well, there is a little more involved here, Judge, than the cause of death. There is People's Exhibit 5 which is the envelope in which Dr. Goldenberg put the [fol. 202] pellet after he had extracted it from the body of the deceased, and there is a question of evidence here as well as the cause of death.

Mr. Carey: I have no objection to stipulating.

The Court: Do you have any objection to People's Exhibit 5 being received in evidence?

Mr. Carey: Just for the record, that's all.

The Court: Then you won't need the Doctor.

Mr. Carey: I will stipulate if the Doctor were called, he would testify that such a pellet—whatever he did.

The Court: That that is the pellet?

Mr. Carey: That that is the pellet.

The Court: All right.

Mr. Carey: That the matter was turned over.

Mr. Conley: Stipulated then that People's Exhibit 6, the pellet that was extracted from the person of Flossie Ward—

The Court: Stipulated if the Doctor were here, he would testify that People's Exhibit 6 is a pellet which he extracted from the body of the deceased in this case, is that right?

Mr. Carey: That is correct.

Mr. Conley: Yes. And he would further testify that he [fol. 203] placed it in the envelope which is People's Exhibit 5, signed his name on it and turned it over to the police.

The Court: So stipulated?

Mr. Carey: Yes, so stipulated.

Mr. Conley: And we will offer all these exhibits into evidence, Judge.

Mr. Carey: There is an objection for the record.

The Court: All right, let's number them. They are offering Exhibits 1 to 8.

Mr. Carey: 1 through 8, Judge.

The Court: Your objection is overruled. Exhibits 1 through 8 are received.

(Thereupon People's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, and 8 for identification were received in evidence and marked as People's Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, respectively, and are in words and figures as follows:)

[fol. 204] Mr. Conley: And it is further stipulated by and between the defendant through his attorney and the State's Attorney of Cook County that if Dr. Goldenberg were to testify, he would testify that he conducted an examination on the body of Flossie May Ward on March 1, 1959, and that in his opinion the said Flossie May Ward came to her death because of multiple extreme injuries following a gunshot wound of the head. So stipulated?

Mr. Carey: Yes.

Mr. Conley: And the State will rest.

The Court: Age?

Mr. Conley: What is the age of the defendant?

Mr. Carey: 32.

The Defendant: 1.

Mr. Carey: 31.

The Court: 31. Stipulated that the defendant is 31 years of age?

Mr. Carey: Yes.

The Court: State rests?

Mr. Conley: State rests.

(The State Rests.)

The Court: You may proceed with your defense.

Mr. Carey: If the Court please, I don't see my associate [fol. 205] here. I will request a short recess. Mr. McDermid is going to handle the defense side of it.

The Court: We will take a ten minute recess.

(Recess taken.)

The Clerk: Theodore Robinson.

The Court: You may proceed with your defense.

STIPULATION AS TO DEFENDANT'S EXHIBIT No. 3

Mr. Carey: Judge, we have a stipulation, as the Court will recall, at the beginning of this matter which was the official record from Kankakee State Hospital brought to this court under a subpoena duces tecum by a Mrs. Smith. I would like to have it marked Defendant's Exhibit 3 for identification.

(Thereupon said document was marked Defendant's Exhibit No. 3 for identification.)

I would like to say that Mr. Conley has had an opportunity to examine this and it is in the same condition at the time he examined it as it is now. I would like to offer Defendant's Exhibit 3 for identification into evidence as Defendant's Exhibit 3.

The Court: Any objection?

Mr. Conley: No objection.

[fol. 206] The Court: There being no objection, Exhibit 3 is received.

(Said document, having been so offered and received in evidence, was marked Defendant's Exhibit 3, and is in words and figures as follows:)

[fol. 207] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Carey: If the Court please, Mr. McDermid, he is in the hall. I went to get him once. I will bring him in.

The Court: Let's proceed, please. We have wasted fifteen minutes. We have thousands of indictments waiting for trial. I can't waste fifteen minutes waiting for defense counsel. Let's move.

Mr. McDermid: I am sorry, your Honor. There was a motion to exclude witnesses, your Honor, and I do notice that some—three of my witnesses are presently in court.

The Court: It is your duty to see that they are out, particularly when you make the motion to exclude them.

Mr. McDermid: You may stay, and take the stand.

The Court: Have you been sworn, Madam?

The Witness: No.

[fol. 208] The Court: Swear the witness, please.

(Witness sworn by the Clerk.)

Mr. McDermid: May I have one minute to satisfy—

The Court: We have wasted eighteen minutes. You must prepare your lawsuit before you come to court. We have been on trial now for a whole day and a half and you have had ample time to talk to your client. Go ahead, talk to him now.

Mr. McDermid: This is something that came up that I didn't anticipate, your Honor.

The Court: All right.

(Thereupon a discussion was had between Mr. McDermid and the defendant outside the hearing of the Court and the Reporter.)

(Defendant, standing at the Bar.)

Mr. McDermid: Just for the record, your Honor, may I say that the defendant is concerned about the subpoenaing of certain witnesses whose names were on the witness list. Warren Carey and I have investigated them. We do not believe that they would add anything to this matter. However, he feels that because they were on the list, that he wants everybody to testify. That is the objection that the [fol. 209] defendant is making at this time.

The Defendant: Judge, your Honor, they were on the State's witness list and the State said they had several witnesses. They produced two. For what reason, I don't know, but I am on trial here and I would like to be given every consideration and I would like—

The Court: You will get every consideration.

The Defendant: I would like that the court be adjourned until tomorrow morning.

The Court: No, sir.

The Defendant: To give me time to confer with counsel for the calling of witnesses.

The Court: No, sir. We have been waiting here since 11:00 o'clock, waiting for your lawyer. It is now 11:30. We have been on trial a day and a half.

The Defendant: I thought it was by agreement. When I saw him, I told the lawyer we weren't ready now.

The Court: No, sir. Who are the witnesses you want?

The Defendant: I don't have the list; if I could see the list.

The Court: Get the list. Who are the witnesses?

[fol. 210] Mr. Conley: I am handing our list of witnesses to counsel now.

Mr. McDermid: And I am handing this to Theodore Robinson so that he can satisfy himself at this time.

The Defendant: I am unfamiliar with any of those names whose names appear on the list.

The Court: Which witness do you say that you want?

The Defendant: I understand that there was other people present besides the one that was presented here to the Court.

The Court: Well, who are they?

The Defendant: I do not know by name.

The Court: If you don't know them—

The Defendant: I couldn't tell by looking at the list here because I do not know the names of the people on the list.

The Court: If you will tell your counsel what witnesses you want—

The Defendant: If the State has a list of the ones, the witnesses, that they didn't call, I would ask the State's Attorney to familiarize me with the list.

The Court: Is this the complete list?

[fol. 211] Mr. Conley: Excuse me, Judge. There were witnesses that were not called in this case, one of which could not be found. That is—

The Court: Who was that?

Mr. Conley: A Miss Butler. And a Mary Lou Collins, I understand, was served but she left on a plane for California yesterday around noon, so she is not available. And, of course, the one who can't be found is not available. How-

ever, they would be State's witnesses and there is nothing that I would like better than to have those two people here. The other witnesses who were not called were police officers, partners of the officers that testified and their evidence would only be cumulative and similar to the testimony that has been heard already.

The Court: Which witnesses do you want to call?

The Defendant: The witnesses that testified here for the State said that there was six or seven, eight some people present there at the time and whoever those people are, I mean if they were present at the time they arrived, the investigating officer arrived at the scene of the crime—

The Court: Do you have the list of witnesses that were [fol. 212] in the restaurant at the time of the shooting?

Mr. Conley: Yes, Maxine Butler, the one which I referred to already.

The Court: Is that the one who went to California?

Mr. Conley: No, sir, that is the one who hasn't been found.

The Defendant: I am talking about the patrons, the people they say—

The Court: That is what I am talking about.

Mr. McDermid: My investigation has not been able to turn up the names of any of the patrons that were in the place.

The Court: Do you have the names of the patrons, Mr. State's Attorney?

Mr. Conley: No, sir, we don't.

The Court: Do the police have them?

Mr. Conley: I don't think they have, Judge.

The Court: Is Breckenridge here? Get him out here.

Mr. Conley: The police naturally were interested in finding as many witnesses as possible, and I am convinced that this list of witnesses includes all that were found, including [fol. 213] the names and addresses of them.

The Defendant: Also, Judge, your Honor—

The Court: Officer Breckenridge, did you get the names of the patrons that were in the restaurant at the time of the shooting?

Officer Breckenridge: No, all of them fled, your Honor.

The Court: They were not there when you arrived?

Officer Breckenridge: No, sir.

The Court: What else do you want, Mr. Robinson?

The Defendant: Well—

Mr. McDermid: May I say, your Honor, to the witnesses and one of the witnesses I did speak with was Mary Lou Collins, one of the persons listed here who apparently is now in California, and it would not be in my judgment that she would be helpful in this matter in any pertinent degree and that she told me that she did not see the occurrence.

The Court: Very well. Anyone else you want, Mr. Robinson?

The Defendant: Well, I asked the attorney yesterday to subpoena Mr. and Mrs. Robert Moore.

The Court: What do they know about it?

The Defendant: In whose apartment I was arrested in, [fol. 214] I mean arrested near.

The Court: What will they testify to?

The Defendant: Well, I do not know, sir, but I would like to have them subpoenaed in court.

The Court: We can't subpoena people unless you tell us what they are going to testify to.

The Defendant: Well, the police are contending that the clothes they have found in Moore's apartment was mine. That is the reason at the beginning of the trial, I asked the attorney to have a pretrial preliminary to determine the admissibility and the validity of the evidence that the State was intending to use against me.

The Court: Let's hear the rest of the evidence and we will decide on that. Let's proceed with the trial.

Mr. McDermid: May I say for the record, however, that I do not recall him asking me to subpoena the Moores in yesterday, and I think that you will have a chance to talk to Mr. Warren Carey in a few minutes again and he will be able to satisfy you.

The Defendant: The court was recessed and I asked him to come back and he didn't. He failed to comply.

The Court: Let's proceed. At the recess for lunch, you [fol. 215] can talk to your lawyer then.

The Defendant: All right.

(Defendant seated at counsel table.)

WILLIE CEOLA PETERSON, a witness called on behalf of the Defendant, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDermid:

Q. Would you state your name, please?

A. Willie Ceola Peterson.

The Court: Willie Ceola Peterson?

The Witness: Willie Ceola Peterson.

The Court: All right.

By Mr. McDermid:

Q. I will stand back here. You speak up so I can hear you and everybody will hear you. What is your address, Miss Peterson?

A. 414 East 44th Street.

Q. Where is that located, in what city?

A. Chicago, Illinois.

Q. And what is your relationship to the defendant?

A. Mother.

Q. Where was Theodore born?

[fol. 216] A. Chicago, Illinois.

Q. Where were his early years spent, in what city?

A. Chicago, Illinois.

Q. Is his father alive at this time?

A. No, deceased.

Q. How old was Theodore when his father died?

A. About seven.

Q. What was Theodore like as a little boy?

A. Well, he was a very nice, affectionate child in growing up.

Q. Do you remember any unusual occurrence in his first ten years of life that you would feel remarkable?

A. Yes. A girl went on the third floor and dropped a brick down and fell on his head when he was between the age of seven and eight, so she knocked him out. He blacked out and the blood run from his head like a faucet and they had to pick him up and run him to a doctor.

Q. And was there any change in his behavior after this incident?

A. Well, he acted a little peculiar but not enough that I took time out to see about him because I had to work.

[fol. 217] Q. Was there any change in his appearance after that?

A. Well, yes. He was knocked cockeyed. He got cock-eyed and I had to run around and I had taken him to an eyeglass doctor, a specialist, trying to correct the crossness of his eyes.

Q. When you say cockeyed, you are referring to his eyes?

A. Yes, they were crossed.

Q. Did your son go into the military service at all?

A. Yes, he did, the first day he made eighteen, he went in.

Q. Do you know approximately what year that would be?

A. In 1945, I think.

Q. Now, prior to his going into the service, did anything unusual occur that you can recall?

A. Well, after he went in service and returned home—

Q. Excuse me. Prior to, before going into the service, in that period from ten years until he went in the service, do you remember any unusual circumstances occurring?

[fol. 218] A. No.

Mr. Conley: Your Honor, if I may interrupt, I think I have to object at this point. I don't think this is proper evidence for the case on trial. It might be proper in mitigation but I can't see how any of this is material to the issues before the Court.

The Court: Well, he is trying to show me the background of the defendant. Overruled. Go ahead.

By Mr. McDermid:

Q. Now, during the period that he was in the service, did you see your son at that time?

A. When he come home on a furlough, yes.

Q. Did anything unusual occur during that time?

A. Well, he went out with the boys and when he come home one night, the next day he asked me to have dinner for a little girl he was keeping company with, so I did. And sitting down talking to her, he jumped up and run to a bar and kicked a hole in the bar and he run up in the front. I went back to see what had happened because I heard all my glasses break up that was in the bar and I asked him what on earth was wrong with him and he just stared at me, and paced the floor with both hands in his pockets.

Q. And at that time, what did you do after that?

[fol. 219] A. Well, my husband told me not to call the MP's to take him back, maybe he would get over it and get himself adjusted.

Q. Did anyone else come over to your house that same day?

A. Well, the next morning I got up, I called a friend of mine and asked her would she come over and talk to him and see what's wrong with him because I thought maybe he was losing his mind. He had such a glare in his eyes and he didn't seem to adjust in stepping up to talk to me.

Q. Who was this person who came to talk to you?

A. Mrs. Alice Moore.

Q. Now, after he came back from the service, when was the first time if at all that you noticed any unusual circumstance occur?

A. Well, I had noticed it all along since he had been out of service, that he keeps a glare in his eyes and he

seemed to be lost in himself and he seemed to be in deep study most of the time and when I walked up and try to talk with him, he starts to glare and says nothing is wrong.

Q. Has he made any complaints of being ill?

A. Well, he usually complains of headaches all the time [fol. 220] and I begged him to let him go to the doctor with me to see about himself but he only promised that. I was never able to get him there.

Q. When did you first notice that he had headaches?

A. Well, when he was a child growing up, he complained of headaches.

Q. You don't remember exactly what age or the year that he first began to complain of headaches?

A. Well, after this brick struck him in the head.

Q. Now, turning your attention to 1951, did anything unusual occur in that year that you recall?

A. Yes. In 1951, Theodore lost his mind and was pacing the floor saying something was after him.

Q. Would you tell us how that happened? Where was this that this happened?

A. Theodore went over to an aunt of his. He said four o'clock in the morning—

Q. What is her name?

A. Helen Calhoun. She let him in and she had been up with him from four to six so she called me and I caught a cab and went to see about him. And she had a time opening the door to let me in because he wouldn't let her open the door. Someone was going to shoot him or some- [fol. 221] one was going to come in after him, and when she did get him calm enough, she opened the door as he walked back facing the window. And when I went in, I went to him and hugged him to ask him what was wrong and he went to pushing me back, telling me to get back, somebody was going to shoot him, somebody was going to shoot him.

Q. Did you observe his face at that time?

A. Yes, sir. He had that starey look and seemed to be just a little foamy at the mouth.

Q. Was there anything else unusual about him?

A. Well, yes. He didn't seem to hug me and show his affection to me.

Q. Did he behave?

A. Well, we had to call the police in and he wouldn't let us open the door for the policemen so when we finally—one of us pushed him back to the window and one of us opened the door and the law come in and he said, "Well, looks like he has got to go." So I told him, I said, "Go where?" He said, "Well, he has lost his mind." I said, "Yes". He said, "Well, I can't take him to Hines Hospital but I'll get you a cab and send you out there."

Q. And you did go to Hines Hospital?

[fol. 222] A. Yes, we took him to Hines.

Mr. McDermid: I am sure she will be able to control herself.

Q. And how long did you stay at Hines Hospital?

A. They kept us there just about half of the day and they sent us to the County with him in the ambulance. So we had to hold him in the car in taking him because he kept trying to jump out.

Q. And from County Hospital, where did he go at that time, do you remember? Do you remember what department he was in at the County Hospital?

A. No, they kept him in the receiving room.

Q. And do you know how long he was at the County Hospital?

A. He was there a week until they had court proceedings on him and they sent him to Kankakee.

Q. Do you recall how long he was at Kankakee Hospital?

A. Oh, about six or seven weeks, I think. So his wife came out. She was going to sign him out. So I told her, "If you do, whatever happens is your business. He needs to stay there and take treatment because," I said, "He is definitely off."

Q. And then he did come out, is that correct?

[fol. 223] A. Yes. Later we seen him because she said they had a baby, he was her only sole support.

Q. Did he come home and live with you at that time?

A. Yes. He didn't have any other place because he had told me so I took him in and kept him about three weeks and I told her to find a place and he would sponsor her the money and she found a place and she had to put up a deposit and I gave her the rent, first \$50 to put up.

Q. When next did you see Theodore Robinson, your son?

A. When next to that?

Q. When next did you observe anything unusual about your son?

A. Well, after he went to Kankakee and stayed, about a year later, he start cutting up again and he would visit me frequently but I noticed he didn't seem to be the same.

Q. Would you tell us what he did about a year later to make you feel that he was different?

A. Well, about a year later, he and his wife separated and he shot his baby and killed the baby and shot himself up over the ear and come out the top of his head.

[fol. 224] Q. Who was he living with at this time?

A. He had went to his aunt's with this baby, Helen Calhoun.

Q. And this was in the City of Chicago?

A. Yes, Chicago.

Q. You remember approximately what year that would be?

A. I think it was around '52.

Q. Did you see him at that time?

A. No. They didn't let me see him. They called me from Provident Hospital. That is how I happened to know about it.

Q. Do you remember any unusual behavior on his part just prior to this shooting?

A. Well, no, because I didn't visit him that often.

Q. Then what happened to Theodore after he had attempted to shoot himself? Where did he go after that?

A. Well, the police picked him up and turned him in. So they had him in court and they sent him down to Joliet.

Q. Do you recall where he was picked up by the police?

A. Out through the park on 57th Street, I think, at the [fol. 225] police station. He was wandering around out there and he walked up to one of them and asked him for a cigarette.

Q. Up to one of the policemen?

A. Yes.

Q. Do you recall what year approximately he returned from the penitentiary?

A. 13th day of September, 1956.

Q. And where did he live at that time?

A. Well, from September 13, he lived with me until January. Sometime in January, he met this girl of the last incident and he took up with her so finally she got him away from me into the house with her to live as common law.

Q. You are referring to the deceased, Flossie May Ward?

A. Yes, so I talked with him and I told him that I didn't approve of it, and he had brought the girl over to me. I told him the girl was too old for him. I said, "Now you are going to get into trouble. You should stay here so I can keep watch over you". So he said, "Well, I think she is a nice person." I said, "Well, what you think is nothing."

Q. Now, in this period of time meaning shortly after he [fol. 226] came back from the penitentiary, did you try to get any help for him, Mrs. Peterson?

A. Yes. I went to 48th Street station and took out a warrant and I told them what I wanted with him. I told him that my son seemed to have a disturbed mind with things he was doing, he is not normal, and I wish you would help me to pick him up so I can have him put away. I signed this warrant and went back to find out why they hadn't picked him up because the way he was fighting around in the streets, people were beating him up. He looked unmerciful.

Q. How many warrants have you issued for the arrest of your son?

A. I took out one and went back to see about why they hadn't picked him up and he said, well, they had more warrants than mine, I had to wait.

Q. When was this warrant that you are referring to issued?

A. Well, when he jumped on a brother-in-law of mine, he beat him up terrible.

Q. About what month was that?

A. Well, I disremember but I think it was in the summertime in '57 or either '58, I disremember.

[fol. 227] Q. Did you have a warrant issued just prior—

A. Yes.

Q. —during the month of February, 1959?

A. I don't think it was in February. No, I didn't have a warrant in February, I don't think. The police come to my house in February of '59. I didn't issue a warrant.

Q. Would you describe at this time how your son appeared the times when he did not seem as you say to be normal?

A. Well, he would look starey-eyed and he would put his hands in his pockets and pace the floor.

Q. Was there anything unusual about his speech?

A. Well, he didn't seem to talk and when he would say something, he didn't say too much to me.

Q. Would he be sad or would he be happy or—

A. No, he was sad and he would just stare and look and I wanted to know from him what was he worried about, what was happening and he still wouldn't tell me. He would just have a glare in his eyes.

Q. Now, Mrs. Peterson, based on your observation of your son and based on what you have mentioned here, do you have an opinion as to whether or not your son is sane or insane?

[fol. 228] Mr. Conley: Objection.

The Court: Overruled.

By Mr. McDermid:

Q. Do you have an opinion?

A. I think he is insane. There is evidently something definitely talking back or something has happened because he has never did that before. In fact, it doesn't run in the family, of insanity, but there is something definitely wrong with him.

Q. Do you have an opinion as to whether or not he knows the difference between right and wrong?

A. No.

Q. You don't have an opinion on it?

A. I don't think he knows the difference between right and wrong. I think he thinks whatever he does is right.

Mr. McDermid: That's all, Mrs. Peterson.

Mr. Conley: Just a minute, Mrs. Peterson.

Cross examination.

By Mr. Conley:

Q. Could you tell us when Theodore started drinking heavily?

A. After he come back out of service.

Q. And on these times that you have talked about after he came out of service, when he acted strangely, was he [fol. 229] drinking at those times?

A. Sometimes he would be drinking and sometimes he wouldn't.

Q. And you discussed your testimony with Mr. McDermid here before you testified, is that right?

A. Well, yes, I talked with him.

Q. And you would like to help Theodore if you can, wouldn't you?

A. Yes. He is my son, yes.

Mr. Conley: I have no further questions.

The Court: Call your next witness.

(Witness excused.)

Mr. McDermid: Helen Calhoun.

The Bailiff: Miss Calhoun is not back there.

Mr. McDermid: Alice Moore then.

This witness has been sworn as of yesterday.

The Court: Were you sworn, lady?

The Witness: Yes.

The Court: Be seated, please.

[fol. 230] ALICE MOORE, a witness called on behalf of the Defendant, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDermid:

Q. Would you state your name, please?

A. Alice Moore.

Q. And your address?

A. 5532 Ingleside.

Q. What is your relationship to the defendant Theodore Robinson?

A. None.

Q. How did—on what occasion did you get to know Theodore Robinson?

A. Through his mother and sister. I sew for them.

Q. Approximately how long have you known Theodore Robinson?

A. Well, since he is about ten or twelve years old.

Q. At that age, would you describe his behavior at that age?

A. He was a very quiet boy.

Q. Did he have any illness that you know of that was [fol. 231] noteworthy?

A. No, not that I know of. He just was quiet, just a very quiet boy; unusual.

Q. When did you first notice any remarkable behavior, different behavior about him?

The Court: She hasn't said that she has.

Mr. McDermid: Thank you.

Q. Have you ever observed any unusual behavior about Theodore Robinson?

A. Yes.

Q. When was the first time that you observed any of it?

A. When he came back on furlough from the Army.

Q. Where were you at this time?

A. Where was I living?

Q. Yes, where were you living?

A. I was at 611 East 42nd Street at this time.

Q. Did you see him at this time; where?

A. At this address.

Q. What was the occasion for your seeing him?

A. He just came to visit me to say hello.

Q. What was the unusual behavior that occurred at this time?

A. Well, when he was talking or he was saying some-[fol. 232] thing, he would laugh, you know, laugh so much, and he didn't do that, and I just wondered why, what he was laughing about; about everything was so funny.

Q. What other behavior did you notice about him around this time?

A. Well, nothing so particularly.

Q. Do you remember him doing anything which was unusual?

A. No. When I say anything, he just get tickled.

The Court: Get what?

The Witness: Tickled. Laugh a whole lot.

By Mr. McDermid:

Q. Did you around about this time, meaning about the time he returned from the Army on a furlough, were you called to his home?

A. Not at this particular time. After he came home from the Army, I was called to his home.

Q. What occurred at that time?

A. He had went off on some kind of rage or something.

Q. I would prefer that you would tell us. Answer the question more directly. When did you first see him at this time?

A. When he did this at his home?

[fol. 233] Q. Yes.

A. When his mother called me. That is when you mean?

Q. Yes. And what did you do then?

A. She called me to come over and talk to him, seemed he was in a rage and she couldn't do anything with him.

Q. What did you do?

A. I went over to the house.

Q. And what did you observe at that time?

A. Well, he had kicked a hole in the bar like, you know, a little bar she had there.

Q. Did you see Theodore Robinson at that time?

A. I did.

Q. Did you notice anything unusual about him?

A. Very much.

Q. Would you describe his behavior at that time?

A. Well, his mother asked me to see if I could talk to him and get any sense from him and I went to him to talk to him and he was sitting with his head down staring at the floor like this (indicating) and when I would talk to him, he didn't give me no answer and when he did raise his head to look at me, he looked at me and just like this, [fol. 234] glassy eye, and I said, "What is wrong?" and he didn't say anything and then he just stared, just stare in space just like that, but he wouldn't talk to me.

Q. How long did he sit there?

A. I sat with him about twenty-five or thirty minutes.

Q. Where was his mother at this time?

A. Well, she was in and out. I told her to go up in the front and let me talk to him by myself.

Q. Did he talk to you at all?

A. No, he wouldn't talk to me. I couldn't get anything out of him.

Q. And then finally what occurred?

A. I went home. I told her I couldn't do anything with him. "There is something. I don't know, but I am going home. I don't have any more time."

Q. Do you remember any other unusual circumstance? Do you remember any other unusual behavior by Theodore Robinson after that?

A. No. I wasn't around him for anything else.

Q. And have you seen him in the last year?

A. Not to say anything to him.

Q. Now, based on the incidents that you have stated here in the court, do you have an opinion as to whether Theo- [fol. 235] dore Robinson is sane or insane? Do you have an opinion?

A. When he is in those moods, I think he is insane; when he is in those moods, because he is terrible.

Q. Do you have an opinion as to whether or not he is sane or insane?

A. Yes.

Q. First of all, tell me if you have an opinion. Do you have an opinion as to whether—strike that, please.

Do you have an opinion as to whether or not he knows the difference between right or wrong?

A. When he is in those moods, no.

Q. First of all, do you have an opinion as to whether he is—he knows the difference between right or wrong? Yes or no; do you have an opinion?

A. No.

Mr. McDermid: I think that will be all, and I think the record will state as to that.

The Court: Cross examine. Any cross examination?

Mr. Conley: Yes, sir.

[fol. 236] Cross examination.

By Mr. Conley:

Q. This bar that you refer to, Ma'am, what kind of a bar is it? The one I know is to work with.

A. A table bar you use to serve.

Q. To serve what?

A. Oh, when you have company or anything, she keeps the glasses and things she has in there, that we have in the dining room.

Q. Were there any intoxicating beverages on the bar?

A. No, there wasn't.

Q. Did you ever see any intoxicating beverages on that bar?

A. No, I didn't.

Mr. Conley: I have no further questions.

The Court: Next witness, please.

(Witness excused.)

Mr. McDermid: Mr. Bailiff, tell me when Mrs. Helen Calhoun arrives.

Mr. William Langham, the older gentleman.

I have one witness to call.

The Court: All right, proceed.

[fol. 237] WILLIAM HENRY LANGHAM, a witness called on behalf of the Defendant, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDermid:

Q. State your name?

A. William Henry Langham.

Q. Where do you live?

A. 7528 South Eggleston.

Q. What is your relationship to Theodore Robinson?

A. I am the grandfather.

Q. How long have you known Theodore Robinson?

A. Well, I have known him since he was about seven or eight months old.

Q. Would you describe the behavior of your grandson when he was a young boy?

A. When he was a young boy, he was fair, he was all right. Nothing wrong with him in his young days.

Q. When did you first observe any change in his behavior?

A. Well, I noticed him. In fact, ever since he had come from the Army, he hadn't been right, been active for some [fol. 238] time. He tells me this is all right, and he acted like he wasn't really normal.

Q. Would you remember a particular circumstance, a particular time when he acted unusual?

A. Well, I noticed—you see, I do a little outside work which is painting and I would have him to come and help me going on late because I had a high blood pressure and had got him to help out, especially to paint the ceilings because it is up. I noticed that he would be working and all at once, he would come down there and walk on out and never say where he is going and whatnot and he would be out two or three hours, and at times he would be in a daze and when he comes out, he comes back just as fresh. He just says he didn't do anything. I noticed that he wasn't at all himself.

Q. Did you notice any other behavior?

A. The next behavior is that he was living in one room of my house and they went out one night, him and his wife. And he come back where I was sleeping when he came back and it seemed like they began a ruckus and fighting back there in the room and he got too hot for her and she ran out and she come up there in the room where me and my wife was.

[fol. 239] Q. Proceed. I am sorry.

A. He trailed her up there and wanted to continue to quibble and I told her to go in the room where my wife was and lay down with her and for him to go back in his room, to try to quiet him down, but he wouldn't accept that. He tried to kick the door in and then went out of the room, he went and got her clothes and threw them out in the yard and he was going to set them on fire and he got so unruly, I had called the law, 48th Street station, to lock him up there and settle the matter.

Q. Did you mention clothing?

A. He said he was going to burn the clothing, burn her clothing up, and the law came and warned him if he would do it again, they would come and lock him up.

Q. Do you recall an earlier incident in his life when he was a younger boy that was unusual?

A. Well, he was normal until he went to the Army and went back. After he comes from the Army, he never been real good since.

Q. When was the last time you saw Theodore Parker—Theodore Robinson in the year 1958?

A. In the year 1958? Why, that date, I couldn't tell, but [fol. 240] something like a week or so I saw him.

Q. How often would you see him during the course of the year?

A. I would never see him, only when he happened to drop by the house and I didn't never visit his home, and at times he would be normal and again he would be acting like he didn't know what he was doing.

Q. Did you see him in the month of January?

A. In the month of January?

Q. Of this year, just prior to this shooting?

A. I saw him three or four days before it was said he committed a crime, before that. I haven't seen him since.

Q. Do you remember anything unusual occurring at that time?

A. Oh, nothing unusual, just always giddy, carrying on a little fun but he haven't got a good, regular mind since he come from the Army.

Q. Based on your observation of Theodore Parker—

A. Robinson.

Q. Theodore Robinson, excuse me, do you have an opinion at this time as to the sanity of your grandson?

Mr. Conley: Objection, your Honor.
[fol. 241] The Court: He may answer.

The Witness: I would feel that he is partly insane all the time. I didn't feel he was normal and I have talked

with him over the matter and tried to get him straightened out and I couldn't do nothing.

By Mr. McDermid:

Q. First of all, Mr. Langham, would you just answer yes or no. Do you have an opinion? Do you have an opinion, yes or no, as to whether or not he is sane? Do you have an opinion, first of all?

A. My opinion, Officer, is that he was insane.

Q. Do you have an opinion as to whether or not he knew the difference between right and wrong? First of all, answer me yes or no as to whether or not you have an opinion. Do you have an opinion?

A. That he was insane? I have an opinion.

Q. Yes.

A. He was insane.

Q. First of all—no, do you have an opinion as to whether or not he knew the difference between right and wrong?

A. I feel he didn't know the difference at times.

Mr. McDermid: I think that will be all, and thank you [fol. 242] again.

Mr. Conley: No cross.

The Court: Next witness.

COLLOQUY BETWEEN COURT AND COUNSEL

(Witness excused.)

Mr. McDermid: Is Helen Calhoun here?

The Bailiff: Not yet, counsel.

Mr. McDermid: Mr. Leroy Austin.

Your Honor, I see that it is 12:15 and it was my understanding that yesterday the Court ordered Helen Calhoun, one of the witnesses in this matter, to be present at 11:30. I do know that she was ill at the time and you really granted her special privilege to arrive late and to have her prompt testimony. She has not appeared and I do think

that she is very important. I would like the matter to be continued until lunch time is passed and hope that I can—

The Court: Call your next witness while we are waiting for her.

Mr. McDermid: Let me confer with my fellow counsel if I may.

Your Honor, at this time I do not have a witness to call. I do hope that I will be able to get Helen Calhoun immediately after lunch.

[fol. 243] The Court: Who will follow her?

Mr. McDermid: May I be excused again?

Mr. Carey: We have one witness by stipulation with the State's Attorney whose testimony will go in by stipulation.

The Court: Who is that?

Mr. Carey: That would be a John Dorgan.

The Court: Stipulation of John Dorgan, what would he testify to?

Mr. Carey: That we have to get from your Honor through your notes of a prior trial.

The Court: Get that book, Mr. Bailiff.

Mr. McDermid: Your Honor, there is also a doctor from the Psychiatric Institute that we have been trying to get in contact with, and we do feel that we can certainly reach him by the morning. We had hopes of reaching him and having him in here this afternoon.

The Court: When did you try to reach him? (Handing book to Mr. Carey.)

Mr. McDermid: Back prior to July, we wrote and received a letter from the Institute in July, and had conversations at that time.

The Court: The Institute of Illinois?

[fol. 244] Mr. McDermid: Yes. It is down at 11th and State Street.

The Court: Did you subpoena him?

The Bailiff: The witness Helen Calhoun is here now, Judge.

The Court: Did you subpoena him?

Mr. McDermid: I understand it was done but I am not really sure.

The Court: If you subpoenaed him, I will issue an attachment. If you did not subpoena him, we cannot delay the trial. You must prepare your lawsuit before you go to trial, not during the trial. You are on trial now for two days. Other cases are waiting. We have to proceed. If you subpoenaed him, prepare a petition and I will send for him. If you did not subpoena him, it is unfortunate.

Are you ready with your stipulation?

Mr. Carey: It wasn't John Dorgan. It was Theodore Davis, an officer of the Park District.

Mr. Conley: We will stipulate, Judge.

The Court: To what?

STIPULATION AS TO TESTIMONY OF THEODORE DAVIS

Mr. Carey: Let the record show that by agreement between the attorney for the defense and the Assistant State's Attorney, the State's Attorney through the As-[fol. 245] sistant State's Attorney, Robert Conley, that if Theodore Davis, an officer, was called, that he would testify that he is assigned to the Park District and that at 7:40 p. m. on the 10th day of March, 1953, that the defendant came into the South Park station and told him that he wanted to confess a crime.

Mr. Conley: May I interrupt just one minute? Your Honor, we would object to this officer being called as a witness. However, if he were allowed to testify as a witness to these matters, we would stipulate that he would testify to this effect.

The Court: Very well.

Mr. Carey: That he was separated from his wife and attempted to commit suicide by jumping into the lagoon. The defendant was taken to the hospital and when he removed his hat, there was evidence that the defendant had shot himself in the head. (Returning book to the Court)

The Court: Is that all?

Mr. Conley: I would object, Judge, to the evidence that the defendant had shot himself in the head. He would testify that the defendant had a head wound.

Mr. Carey: All right, a bullet wound of the head.

[fol. 246] The Court: All right. Call your next witness. I understand that the lady is here now, Helen Calhoun. Helen Calhoun is here. Let's move along a little faster, please.

Raise your right hand, please, and be sworn.

HELEN CALHOUN, a witness called on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDermid:

Q. Will you please give your name?

A. Helen Calhoun.

Q. Spell your last name?

A. C-a-l-h-o-u-n.

Q. What is your address?

A. 70 East 49th Street.

Q. Will you please sit up and face me. I think we can have a little better contact and we will all be able to hear.

What is your relationship to Theodore Robinson?

[fol. 247] A. That's my nephew.

Q. And when did you first see Theodore Robinson as a human being?

A. I went and got the doctor when he was born.

Q. Do you remember the year of his birth?

A. No, no, I don't.

Q. Where were you living at the time?

A. 521 East 50th Street, 521 East 50th Street.

Q. Where was his mother living at that time?

A. 521 East 50th Street.

Q. And did you see Theodore Robinson after he was born and as a child?

A. Yes, I did. Yes.

Q. Would you describe his behavior?

A. As a child, he was a normal baby. He went to school, went to Sunday school, went to church with my son. We had no trouble whatever with him.

Q. When did you first observe anything unusual? Have you ever experienced anything unusual about Theodore Robinson? First answer yes or no.

A. Yes.

Q. When did you first observe anything unusual about Theodore Robinson?

A. Well, one reason—one time when he had the accident [fol. 248] with the baby, and before that he came to my house one morning and I was washing the windows, blinds, on a ladder. And he told me someone was trying to kill him, and he was pacing the floor and starey-eyed and I just kept trying to calm him down by talking with him and trying to pray with him. I didn't, so I did get a person to call his mother and then he asked me himself to call the police and I did.

Q. Approximately what year was this?

A. I don't recall really the number—the year, sir. It's the day, the same day that we took him to the hospital at Vaughns, and then they transferred him from there back to Cook County to the Psychopathic Hospital, so you have those dates.

Q. Turning your attention again to this first unusual behavior that you observed, you don't recall the year?

A. No, I don't.

Q. Do you remember what season of the year it was?

A. No.

Q. Was Theodore Robinson living at your home at that time?

A. No. He came there early in the morning.

[fol. 249] Q. What were you doing?

A. Washing the windows and blinds in my kitchen.

Q. Would you tell us then, did he—how did he enter the apartment?

A. Well, he rung the bell and I went to the door and when he came in, he told me to close it, that someone was trying to kill him, and I said, "What?" And he was talking, you know, unusual, and so I just passed it off and went back to the kitchen and started to washing my blinds over again and he said, "Will you get down from the window because they are going to kill you too." I said, "Nobody is going to kill either one of us." And he in the meantime is pacing the floor so he reached to pull me down off the ladder because he was trying to protect me, I guess, if someone was trying to kill.

Q. What did you do then?

A. Then I got down and I went and called his mother and about a half hour or so, she got there and in the meantime he is telling me to call the police so I called the police. He wouldn't let me let anyone else in but his mother and the police. So when the police came, he told us that he couldn't take us to the hospital but he would [fol. 250] carry us to the nearest cab stand which was 51st Street under the "L". I have forgotten the name of it but it was 51st under the "L". He put us in this cab and we went to Hines Hospital and in the meantime on our way out, he tried to jump out and we held him and the cab man was nervous and we were nervous, and we got him down there and they strapped him down in a wheelchair.

Q. Then what?

A. They brought him from there in an ambulance to the Psychopathic Hospital back of County.

Q. The County Hospital, in back. Do you know how long he stayed there?

A. No, I don't.

Q. Where did he go from there?

A. He went to Kankakee.

Q. Now, during this circumstance at your home, would you describe his face if you would? Was there anything unusual about his face?

A. His face, well, he was starey-eyed and walking and prancing. I mean he was just—he was just delirious.

Q. Do you remember anything unusual about his eyes? [fol. 251] A. Well, yes, but I mean I was as nervous as he was because I mean I knew that something was unusually wrong with him and it wasn't natural. I mean it wasn't the way that I was accustomed to seeing him.

Q. Did he recognize and know who you were, as far as you knew?

A. Well, he came to me. I don't remember him calling my name.

Q. From the County Hospital, where did he go, if you know?

A. To Kankakee.

Q. And do you know approximately how long he was there?

A. No, I don't, but I imagine, I guess the length of time they kept them. I don't know. I don't have no dealings with them.

Q. Did you see him shortly after he got out from the Kankakee hospital?

A. Well, not right away, no.

Q. When was the next time that you observed any unusual behavior about Theodore Robinson?

A. Well, I didn't see him too often. The next time I noticed as he came to my house again and at this time [fol. 252] he had a baby. He had his baby.

Q. Were you particularly close to Theodore? Could you describe your relationship as aunt? Was it a close relationship?

A. I should think so. He loved me and I loved him. Any time that I could help him, I was always willing to help him or anyone else.

Q. Now, turning again to the second time that he came to your house and displayed unusual behavior, would you tell us about that? This will be the last time, the second and last.

A. Judge, your Honor, that's in the record. Do I have to go through that?

The Court: Is that the instance when you were on the stepladder?

The Witness: No, sir, this is the incident of the baby and that is in the record.

Mr. McDermid: When the baby was shot.

The Court: Well, let him tell about it, and don't disturb her. He can tell it, can't he?

Mr. McDermid: He hasn't been able to as yet.

The Witness: I will do it.

Mr. McDermid: I have never really—

The Court: This lady is ill.

[fol. 253] The Witness: I will do it.

By Mr. McDermid:

Q. We would appreciate it. Do you remember approximately the year of this?

A. I think it was '53, I am not sure.

Q. Just tell me again if you would just what happened? Where were you at the time?

A. I was at home and this was on a Sunday night. He brought the baby to my home, and they stayed there the night, Sunday night and Monday. And at the time I had a tailor shop. And when I came home from work, I found the baby and I called the operator and asked her to give us—give me the fire department, the police or anybody that could assist me. And she kept the line open. She was very nice and she made all the calls that I wanted and the firemen were the first to get there.

Q. Excuse me.

A. We took him to the hospital.

Q. Would you have a drink? Have a drink if you would and get rid of that.

A. All right. Thank you.

Q. Now, would you proceed? But first answer this if you would; when you say you found the baby, how many

days—strike that. When he came over to the house with [fol. 254] the baby, do you remember what night of the week it was?

A. I am almost sure it was a Sunday.

Q. And do you remember why he came over?

The Court: She said they came over Sunday and why have it repeated. She is having a difficult time as it is.

Mr. McDermid: All right.

Q. When you say you found the baby, would you describe how you found the baby?

A. I stopped at a store. It was a little store there by me and on my way in, I brought in some milk. Not knowing that anything had happened and when I stuck the key in the door, I thought the baby had fallen because it was very active. Not knowing what, I just didn't go near. I just called the operator, and the operator sent me the ambulance, the fire ambulance, and we went to the hospital not knowing that the baby was shot. We didn't know that. They just picked the baby up and we went. When we got there, that was what we found out.

Q. How old was the baby at that time?

A. If I remember, he was approximately eighteen months [fol. 255] old.

Q. And did you see Theodore on that day after that?

A. The police brought him in while I was sitting in the hospital.

Q. While you were sitting in the hospital?

A. Well, the baby wasn't dead when we got him to the hospital.

Q. And did you observe him at that time?

A. No, no, no. You mean the baby?

A. No, Theodore?

The Court: Can we stipulate to this, Mr. State's Attorney?

Mr. Conley: Yes, Judge, we have no objection.

The Court: So stipulated that the defendant on the date she mentioned shot this child. Is that the idea?

Mr. McDermid: Well—

The Court: And that from that shot the child died. Is that what you are trying to prove?

Mr. McDermid: I am not proving that. That is a part of the circumstance but the more important thing is the surrounding of the incident which I am about to get to.

[fol. 256] The Court: All right, proceed.

By Mr. McDermid:

Q. Did you have an occasion to observe Theodore at that time?

A. Well, being nervous and upset, well, I mean I saw them bring him in. They were waiting on him.

Q. What was his condition at that time?

A. Well, I mean he still had that wild look but my mind wasn't on it.

Q. What was he doing at the hospital, if you know?

A. Well, he was injured himself. He shot himself in the head at the same time.

Q. Now, turning your attention to when he first came to your apartment on the Sunday night as you recall, do you remember anything about his behavior at that time that was unusual?

A. Well, he was not in any condition to care for the baby any farther and the reason I kept him is because I was sick myself but I didn't want him nor the baby to leave because I thought I could be of some assistance.

Q. And how did he behave? Did you talk to him, I take it, did you?

A. Surely.

Q. How did he talk?

[fol. 257] A. Well, again his behavior was still—I mean, he wasn't in any condition that he could care for the baby any more nor himself.

Q. Would you be more specific?

A. Well, I mean he was sick.

Q. How did he look? How did he stand?

A. Well, I mean he stood all right. He was just prancing. I mean, he was just nervous, just like anybody would be that's sick and just staring, wild.

Q. Did you understand him when he talked?

A. Not directly, no. I mean it wasn't plain in any way that you could understand him. I just figured he would stay and maybe I didn't know what it was, maybe he could sit down and settle himself. He might fall off to sleep but that he didn't do.

Q. Do you remember what he said?

A. No, he didn't want to stay there and he didn't want to leave the baby there but I managed to keep him.

Q. Did he say anything which indicated a lack of understanding of reality?

A. Well, he was upset, he and his wife, they were just upset and he was just upset.

[fol. 258] Q. Now, have you seen him since that time?

A. Seen whom?

Q. Theodore Robinson, since the time that the baby was shot?

A. Yes, I did.

Q. When was that?

A. He stayed in my home from November. The first time he had been to my house since this incident and he had been away.

Q. That was November of what year, if you recall?

A. '58—'57.

Q. How long did he reside with you at that time?

A. He stayed with me from November to around the middle of January.

Q. Did you have an opportunity to observe him over that period of time?

A. Yes, I did.

Q. Did you notice anything unusual in his behavior in that period?

A. Well, he was very nervous and I would walk into my room, and I was trying to keep him from knowing that I was afraid of him and upon doing so show him myself I didn't have any gun or anything in my house. I would sleep with anything under my bed, because I was [fol. 259] ascares of him myself but I still would bluff him that I wasn't.

The Court: Are you going to be with this witness much longer? We are well into the lunch hour.

Mr. McDermid: No, I won't be, your Honor.

The Court: All right, go ahead.

By Mr. McDermid:

Q. Now, based on your observation of Theodore Robinson and the incident with the baby and the incident in which you had to take him to the Hines Hospital, do you have an opinion as to whether or not he is sane or insane?

A. I think he is sick. He needs treatment. He is sick.

Q. First of all, would you tell me if you have an opinion?

A. Yes.

Q. What is that opinion?

A. He is sick.

Q. And what do you mean by sick?

A. Mentally ill, mentally sick.

Q. Do you have an opinion as to whether—would you answer using the words that I suggest? You said you had an opinion as to whether or not he was sane or insane. What is your opinion?

[fol. 260] A. He is insane.

Q. Do you have an opinion as to whether or not he knows the difference between right and wrong?

A. He is sick. No.

Q. Do you have an opinion, first of all?

A. Yes.

Q. What is that opinion?

A. That he doesn't know right from wrong.

Q. Do you have an opinion as to whether or not presently he is sane or insane?

A. He is sick. He is insane.

Q. First of all, do you have an opinion?

A. Yes.

Q. What is your opinion as to his present sanity? What is your opinion as to his present sanity?

A. He is mentally sick.

Mr. McDermid: That's all, your Honor.

The Court: Cross examine.

Mr. Conley: No cross.

(Witness excused.)

The Court: We will resume at 2:00 o'clock.

(Thereupon said cause was recessed until 2:00 o'clock p. m. of the same day, Wednesday, September 16, 1959.)

[fol. 261]

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THEODORE ROBINSON

Indictment No. 59-793.

Before Judge Daniel A. Covelli.

Wednesday, September 16, 1959,
2:00 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Robert M. Conley, Assistant State's Attorney, on behalf of the People;

Mr. Warren J. Carey and Mr. Harold E. McDermid, on behalf of the Defendant.

STIPULATIONS AS TO TESTIMONY OF MAXINE BUTLER AND
DR. WILLIAM H. HAINES

The Clerk: Theodore Robinson.

The Court: Where are the defense lawyers?

A Bailiff: They are not out there. I looked in the hall for them.

Another Bailiff: They are not in the hall, your Honor.

Mr. McDermid: Your Honor, at this time the defense rests.

The Court: Defense rests. Put on your rebuttal.

Mr. Conley: Your Honor, before the defense rests, I would like to mention that we have a statement here from [fol. 262] one of the witnesses on the list that was furnished to the defense, one Maxine Butler. This is the one that I said couldn't be found, and in order to show that we are not trying to hide anything here, I would like to say that I showed Mr. Carey a copy of the statement and he read it and if there is any contention that there is anything in that statement that might be favorable to the defense, we would be glad that the statement itself be introduced in evidence in view of the fact that the woman can't be found.

Mr. Carey: Let me say this. I think I did read this. It seems to me like it is cumulative.

The Court: Statement of whom?

Mr. Conley: It is a—

Mr. Carey: Maxine Butler.

Mr. Conley: Maxine Butler.

Mr. McDermid: One of the witnesses that this morning that the defendant was interested in having in court.

Mr. Conley: We would like to have her in court ourselves but we couldn't find her.

The Court: As I understand it, you have given a copy of this to defense counsel and you are now offering to [fol. 263] stipulate to permit in evidence any part of the statement which the defense counsel wishes to put into evidence, is that correct?

Mr. Conley: Yes, Judge, although I think it would be more proper to put the entire statement in.

The Court: Well, you are offering to stipulate to the entire statement?

Mr. Conley: The entire statement.

The Court: You wish to see it?

Mr. Carey: At that time I read it hurriedly a couple of days ago without realizing that this might come up. In the event that I feel that there is something in here that we would like to put in, we can put it in then prior to a decision of this Court.

The Court: All right.

Mr. Carey: Let me read it then.

The Court: With that understanding, the defense rests. Is there any rebuttal?

Mr. Conley: Yes, Judge.

Mr. Carey: Yes.

Mr. Conley: It is stipulated then by and between the defendant and his counsel of record and the People of the State of Illinois through the State's Attorney of Cook [fol. 264] County that if Dr. William H. Haines, the Director of the Behavior Clinic of the Criminal Court of Cook County, were called to testify, he would testify that he has examined the defendant in this cause, Theodore Robinson, and that he first examined him in the month of May, 1953, and that he testified at a sanity hearing.

Mr. Carey: Judge, we stipulate only to his findings, not as to what he did. As I understand it, I am only stipulating as to his conclusion without—that he did examine him and that he found such and such.

The Court: Found such and such. All right.

Mr. Conley: There are two conclusions involved here, Judge. The defense brought out the fact that there was a certain proceeding in 1953, and I think that Dr. Haines would testify to the sanity hearing in 1953 at which time he made certain statements. In other words, there are two different examinations involved.

The Court: One in '53 and one recently, is that it?

Mr. Conley: Yes, sir.

Mr. Carey: We are only concerned with the one recently [fol. 265] and the report he made to the Court.

Mr. Conley: In view of the fact that the defense brought out the 1953 incident, I think we should be entitled to show the sanity as adjudicated in 1953.

Mr. Carey: I say this, that the record I think of this court indicates that the defendant was restored in 1953 in the Criminal Court Building. If that is what you want me to stipulate, I will stipulate to that.

Mr. Conley: I think it is a matter of record and possibly doesn't even need to be stipulated to.

The Court: Very well.

Mr. Carey: Well, he has been restored from the commitment to Kankakee in 1953.

Mr. Conley: Well, then it is stipulated that if Dr. Haines were to testify today, he would testify that he examined this defendant, rather he re-examined him in June of 1959, and he would testify that he subjected the defendant to certain tests, that in his opinion the defendant is sane.

Mr. Carey: No. I say I will stipulate to this, that his diagnosis was character disorder, he knows the nature of the charge and is able to cooperate with his counsel. That's his finding.

[fol. 266] Mr. Conley: Don't you agree, counsel, if we had him on the stand, that I would ask his opinion whether this man was sane or insane at the time he was examined?

Mr. Carey: Well, I can only stipulate to what we agreed here, and that is what I was going to stipulate to, his diagnosis.

Mr. Conley: Well, in order to save further delay, that would be the stipulation that Dr. Haines would testify that the defendant Theodore Robinson knows the nature of the charge pending against him—the charges, and is able to cooperate with his counsel in the defense of those charges.

The Court: Is it so stipulated, counsel?

Mr. Carey: Yes, Judge.

The Court: Very well.

Mr. Conley: Your Honor, Dr. Haines is not available now. I proceeded on the assumption after having talked to Mr. Carey that Dr. Haines' testimony to both matters would go in by stipulation. Now, the defense raised here is such that I think we should have Dr. Haines' testimony as to his opinion whether this man is sane or insane. It is possible that the man might be insane and know the nature [fol. 267] of the charge or be able to cooperate with his counsel. I think it should be in evidence, your Honor, that Dr. Haines' opinion is that this defendant was sane when he was examined.

The Court: Isn't it a fact that if Dr. Haines had found him insane, Dr. Haines would report that he could not cooperate with his counsel?

Mr. Conley: That is inferentially true and, therefore, I can't see why they should object.

The Court: You have enough in the record now. I don't think you need Dr. Haines.

Mr. McDermid: Could I ask if Dr. Haines has been under subpoena?

Mr. Conley: No, he is not. We didn't know what the nature of the defense would be until today.

The Court: Is that all?

Mr. Conley: That's all, Judge.

The Court: We will proceed with the argument. You wish to argue your case?

Mr. Conley: We will waive argument, Judge.

The Court: State waives argument.

ARGUMENT OF MR. McDERMID

Mr. McDermid: Your Honor, I should like to say that I think our defense is clear that we have presented at the present time. It is as to the sanity of the defendant at the [fol. 268] time of the crime and also as to the present time. In this case, which is a very serious case, the defendant has been able to cooperate with counsel with some reservations.

As shown by the record this morning, he has not understood all of the strategy that has been used, I am sure, and has generally been helpful. However, I do not feel that this present ability of lucidity bears on the issue of his sanity at the time of the crime and his sanity at the present time. I think the words sanity and insanity, the words are legal terms. I think that presently Mr. Theodore Robinson is in a lucid interval. I believe that from the witness stand you have heard testimony to indicate and prove that Mr. Theodore Robinson is presently insane.

Now, I know it isn't an easy matter to determine in our society what should be done with this type of an individual. Our modern psychiatrists, although making great advances in the ability to diagnose, are still lagging in their ability to cure and treat and, however, I think that this is an issue [fol. 269] and a problem really for them. I think that he

does need help, that he is sick, and I think that he should be kept off the streets, observed, treated and helped as much as possible, and I think that that can be done best by sending him to Chester. I think that he should be found not guilty and presently insane on the basis of the testimony that we have heard.

As to the real issue here, rather presuming that he is presently insane, I am just presuming it at this moment, although we do not have the best position or the best desirable methods of treating his condition, I think he still should be found not guilty, and I am sure you would agree if that was the determination of the Court.

I would like to say that one reason for such a close following of the law is that we do not know in the future what will occur in the medical field to take Theodore Robinson and make him a good citizen again. We do not know if this illness can be cured by a new chemical or new machine; something that we cannot predict.

Recently we are told that the Russians hit the moon. Roughly five years ago, I would not have predicted that I [fol. 270] would have been alive to hear such a thing and I think in a remarkably short time again, a drug or something may develop which would place Theodore Robinson back as a civilian back on the streets. At present, I can not say any more than my father could have predicted going to the moon, but I think there is some fear by society in general and I also have that fear that a person might go to an institution and because of the difficulty in determining mental illness a person would be again released to society. And yet if this is the problem and this is the place for him, I think that the officials of the institution should have this opportunity to hold him, observe him and work with him so that if later he is found sane and with assurance, that then he can be released. In the meantime, he is safely away from doing harm, as if your Honor would find him guilty and place him in the penitentiary.

I do think this is a difficult decision, but I think from the evidence that we have carried our burden in showing this issue, and that the State has failed to prove beyond a reasonable doubt that the defendant is sane.

[fol. 271]

ARGUMENT OF MR. CAREY

Mr. Carey: May I just read a few things for the Court's attention, Judge?

The Court: Yes.

Mr. Carey: I have before me a medical record from Kankakee State Hospital which has been introduced in evidence by stipulation, namely, Defendant's Exhibit 3. I would like to call to the Court's attention those things which I believe are important in this particular hospital record. To begin with, I have before me the Kankakee State Hospital report on the 12th day of June, 1952, in which there is a brief statement of the defendant's mental condition. It reads as follows:

"Was drinking and went to the Psychopathic Hospital. He imagined he heard voices, voices of men and women and he also saw things. He saw a little bit of everything. He saw animals, snakes and elephants and this lasted for about two days. He went to Hines. They sent him to the Psychopathic Hospital. The voices threatened him. He imagined someone was outside with a pistol aimed at him. He was very, very scared and he tried to call the police and his aunt then called [fol. 272] the police. He thought he was going to be harmed. And he says this all seems very foolish to him now. Patient is friendly and tries to cooperate."

It says this has taught him a lesson.

And also from the same report, on the 23rd day of June from the hospital which is a staff meeting record, it indicates that Dr. Cowan was the physician in charge of Theodore Robinson while he was in Kankakee.

"He went through an acute toxic episode from which he has some insight. He had been drinking heavily. I am wondering possibly he isn't schizophrenic. I think he has recovered from this condition. I have seen the wife and she is in a pathetic state. I have no objection to giving him a try."

And from further reading, meaning a try on the outside.
And also in the same medical report, it says:

[fol. 273] "The reason for admission: The patient was admitted to this hospital on the 5th day of June, 1952, from the Hines Hospital. Patient began presenting symptoms of mental illness about a year ago at which time he came to his mother's house. He requested money and when it was refused, he suddenly kicked a hole in her bar."

The Court: That is history.

Mr. Carey: Oh, this is from the history, sir.

The Court: Yes.

Mr. Carey: I think it is similar to what you had heard on the evidence today, so it was a problem back in 1952.

Those are the only things that I wanted to call to the Court's attention.

FINDING OF GUILT AND SENTENCE

The Court: Very well. All right, bring up the defendant, please.

The defendant is found guilty of the crime of murder. He is sentenced to the State Penitentiary for a term of his natural life. Take him away.

The Defendant: Judge, your Honor, may I say something [fol. 274] before you take me out of your courtroom?

The Court: Yes, sir.

The Defendant: As you know, I asked the Court about the witnesses that the State had that appeared—that appeared on the list. My lawyers had previously showed me the witnesses to that extent, and I have checked the list. I mean I see that the list is mostly police officers. Well, here the police introduced evidence of some clothes belonging to mine and I was told by the Court before going to trial, any time would be needed to subpoena witnesses, that it would be allowed, and the witnesses would be subpoenaed.

The Court: You have two eminent counsel. They have—

The Defendant: They must be incompetent or something, Judge, your Honor, still and all if they didn't have the

knowledge that they couldn't subpoena the witnesses.

The Court: The Court is satisfied beyond a reasonable doubt—

The Defendant: Still and all, may I still say something? [fol. 275] The Court: (Continuing) —that you killed this woman. Whether those were your clothes or not your clothes, it doesn't make any difference. Take him away. Call the next case.

You gentlemen did a fine job with what you had. You are lucky you saved his life.

Mr. Carey: There is another indictment pending against him.

The Court: How about the next indictment?

MOTION FOR NEW TRIAL AND IN ARREST OF JUDGMENT AND DENIAL THEREOF

Mr. Carey: Judge, just for the record, a motion for a new trial and a motion in arrest of judgment. We waive argument on both.

The Court: Motion for a new trial denied. Motion in arrest of judgment denied.

The Clerk: What was that?

The Court: Motion for a new trial denied, motion in arrest of judgment denied, and sentenced to life imprisonment.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Conley: It would be our motion to nolle Indictment 59-794.

The Court: Motion State, Indictment 59-794 nolle.

Mr. McDermid: At this time, your Honor—

Mr. Carey: Judge, I know that the Court is busy. Just a few things as to the statements made by the defendant; [fol. 276] at a later date if the record is produced, I would like the record to show that the defendant asked me to subpoena Mr. and Mrs. Moore, that I have talked to Mr. and Mrs. Moore. They can add nothing to this matter on trial and I showed Mr. Robinson what they told me

and at that time he said that he didn't wish them. This was after he had requested the Court for the subpoena.

The Court: The record will so show.

Mr. McDermid: I would like the record also to show, your Honor, that I personally have spent much time including perhaps two or three dozen telephone calls to psychiatrists; that I have contacted the Illinois Psychiatric Society and all of its officers requesting assistance in this matter. I have asked Dr. Arieff. His office is on Michigan Boulevard. I have not been able to get an analyst to cooperate and work on this matter, and I do not believe in subpoenaing a psychiatrist to testify when I do not know the degree of cooperativeness that he would display which would be helpful to the cause.

The Court: The record should show that the case was [fol. 277] properly prepared and presented by the two attorneys; that they did everything they could, and they are actually good trial lawyers and officers of the Court.

Call the next case.

Mr. Conley: Your Honor, should not the exhibits in the last case be impounded by the Clerk?

The Court: No.

Mr. Conley: At least some of them?

The Court: I don't think the Clerk has any place to keep them.

Mr. Conley: Small ones.

The Court: You had better take them yourself and preserve them in your own vault. They get down in the Clerk's office and you will never find them again. I suggest you preserve them in the State's Attorney's vault. I think you have a vault down there for that very purpose.

(Which was all the testimony offered and received in evidence and all the proceedings had in the trial of the above-entitled cause.)

[fol. 278] Reporter's certificate (omitted in printing).

[fol. 279]

JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

And Forasmuch, Therefore, as the matters and things hereinabove set forth do not otherwise appear of record herein, the defendant tenders this, his Bill of Exceptions, and prays that the same may be signed and sealed by the Judge of this Court pursuant to the statute in such case made and provided;

Which, pursuant to the provisions of Supreme Court Rule 65-1, the Court being satisfied as to the accuracy of the transcript, and irrespective of the provisions of Rule 65 fixing the time for the presentation, certification and filing of reports of proceedings at trials, is accordingly done this 3 day of June, A.D. 1960.

Approved: /s/ D. A. COVELLI

Judge of the Superior Court of
Cook County, Ex-Officio Judge of
the Criminal Court of Cook
County, Illinois.

Approved:

/s/ ROBERT M. CONLEY
Assistant State's Attorney

Filed: Jun 3 1960, Sidney R. Olsen, Clerk of Criminal
[fol. 280] Clerk's Certificate (omitted in printing).
Court.

[fol. 281]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 14253 September Term, 1964 September Session, 1964

UNITED STATES ex rel. THEODORE ROBINSON,
Petitioner-Appellant,

v.

FRANK J. PATE, Warden, Respondent-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

OPINION—May 3, 1965

Before Schnackenberg, Knoch and Kiley, Circuit Judges.

KILEY, Circuit Judge. The district court denied, without hearing evidence, Robinson's petition under the Habeas Corpus Act, 28 U.S.C. §§2241-2254, to vacate his state conviction for murder and his life sentence. He has appealed, represented by counsel appointed by this court. We reverse and remand.

The district court in denying the petition relied upon the record and transcript of the murder trial without a jury in the Criminal Court of Cook County in 1959, and the opinion of the Supreme Court of Illinois in *People v. Robinson*, 22 Ill. 2d 162, 174 N.E.2d 820, *cert. denied* 368 U.S. 857 (1961).

Robinson's petition alleges that he was denied due process of law under the Fourteenth Amendment at his bench trial by the State's failure to prove beyond a reasonable [fol. 282] doubt his sanity at the time of the alleged murder, by the trial court's failure to conduct on its own motion a hearing into his competence to stand trial, and by the

court's denial of his Sixth Amendment right to compulsory process.¹

Robinson contends on this appeal that the district court erred in failing to require respondent to file a return to his petition, in refusing to appoint counsel for him, and in failing to hold an "evidentiary hearing" in accordance with the rules in *Townsend v. Sain*, 372 U.S. 293 (1962).

We recognize the severe pressure upon the state criminal trial courts to dispose of cases with dispatch in order to maintain a reasonable currency between indictment and trial. This salutary goal, however, must not be reached at the expense of constitutional rights. Robinson's trial was conducted under an undue preoccupation with hurried disposition in an atmosphere charged with haste, hardly consistent with the gravity of a capital case and protection of the right to due process.² One result of the unusual

¹Judges Schnackenberg and Knoch do not concur in that portion of this opinion, beginning at p. 8, dealing with the Sixth Amendment question. See the specially concurring opinion of Judge Schnackenberg, *infra*, p. 12, and the dissenting opinion of Judge Knoch, *infra*, p. 12.

²The following statements are taken from the transcript of the second day of the trial, commencing with the presentation of the case for the defendant late in the morning session. Number references are to the page in the transcript.

(207) The Court: Let's proceed, please. We have wasted fifteen minutes. We have thousands of indictments waiting for trial. I can't waste fifteen minutes waiting for defense counsel. Let's move.

(203) Mr. McDermid: May I have one minute to satisfy—

The Court: We have wasted eighteen minutes. You must prepare your lawsuit before you come to court. We have been on trial now for a whole day and a half and you have had ample time to talk to your client. Go ahead, talk to him now.

(209) The Defendant: I would like that the court be adjourned until tomorrow morning.

The Court: No, sir.

The Defendant: To give me time to confer with counsel for the calling of witnesses.

The Court: No, sir. We have been waiting here since 11:00 o'clock, waiting for your lawyer. It is now 11:30. We have been on trial a day and a half.

[fol. 283] haste was denial to Robinson, an indigent represented by court-appointed counsel and obviously without funds to pay for expert psychiatric testimony, of a fair opportunity to obtain volunteer expert testimony from a public agency. We shall consider this result later in the opinion.

The conviction by a state court of a person for an alleged crime committed while insane violates due process under the Fourteenth Amendment. *Smith v. Baldi*, 344 U.S. 561, 570 (1952) (Frankfurter, J., dissenting); *People v. Robinson*, 22 Ill. 2d 162, 174 N.E.2d 820 (1961). And while the State must prove the sanity of the defendant at the time of the alleged crime, that burden is satisfied in Illinois by the presumption of sanity until the introduction of evidence sufficient to raise a reasonable doubt of the defendant's sanity, at which time the necessity of affirmative proof of sanity beyond a reasonable doubt becomes the burden of the State. *People v. Skeoch*, 408 Ill. 276, 280, 96 N.E.2d 473 (1951); *People v. Patlak*, 363 Ill. 40, 1 N.E.2d 228 (1936).

(246) The Court: All right. Call your next witness. I understand that the lady is here now, Helen Calhoun. Helen Calhoun is here. Let's move along a little faster, please.

(259) The Court: Are you going to be with this witness much longer? We are well into the lunch hour.

(273) [immediately following the conclusion of the final argument for the defendant:]

The Court: Very well. All right, bring up the defendant, please.

The defendant is found guilty of the crime of murder. He is sentenced to the State Penitentiary for a term of his natural life. Take him away.

The Defendant: Judge, your Honor, may I say something before you take me out of your courtroom?

The Court: Yes, sir.

[The defendant then protested against failure of his counsel to call certain witnesses.]

The Court: The Court is satisfied beyond a reasonable doubt—

The Defendant: Still and all, may I still say something?

The Court: (Continuing) —that you killed this woman. Whether those were your clothes or not your clothes, it doesn't make any difference. Take him away. Call the next case.

Robinson's defense to the indictment was insanity at the time of the alleged murder. He contends that he was insane at the time of the trial also, or that at least there was a bona fide doubt of his sanity raised so that the trial judge on his own motion should have impanelled a jury and conducted a sanity hearing pursuant to the then 38 ILL. REV. STAT. §§592-593 (1963).³

Robinson did not testify. The defense presented four relatives and friends as lay witnesses and the stipulated [fol. 284] testimony of a police officer on the question of his sanity. Each witness stated his opinion that Robinson was insane and did not know the difference between right and wrong.

The testimony showed a continuing history of erratic and violent behavior by Robinson from the time he was struck on the head by a falling brick as a child until the unusual circumstances of the fatal shooting and his arrest. Incidents related included a commitment for a short time to a state mental hospital in 1951, from which he was released at his wife's request, the killing of his eighteen month old baby⁴ and his contemporaneous attempted suicide, an attempt to burn his wife's clothes, and his mother's attempts to have him recommitted within a year before the alleged murder.

Robinson's behavior in the shooting and his subsequent arrest was also erratic. Flossie Mae Ward, the victim, a woman with whom Robinson had been living, worked at the restaurant where the shooting occurred. Robinson entered the restaurant carrying a gun which he pointed at Mrs. Ward, within a distance of five feet or less, without saying a word. Upon seeing him she said, "Ted, don't start nothing tonight," and went back to her work. Robinson then moved quickly to the back of the room, a distance of twenty feet or more, and jumped over the counter;

³ *People v. Burson*, 11 Ill. 2d 360, 368, 370, 143 N.E.2d 239 (1957); *Brown v. People*, 8 Ill. 2d 540, 134 N.E.2d 760 (1956).

⁴ This incident occurred in 1953. The record is unclear on this point, but it appears that Robinson served a sentence of only three years after being convicted of shooting the baby.

as a result, two other employees were placed between him and Mrs. Ward. He rushed past them and fired one or more shots at the victim. Both Robinson and Mrs. Ward then jumped over the counter and ran out the door onto the sidewalk, where her body was found.

The evening following the shooting, Robert Moore told the police that Robinson was at Moore's apartment. When officers in uniform arrived on the floor of the apartment, Robinson was standing in the hall near the elevator. The officers went by him, talked to Mr. and Mrs. Moore in Robinson's view, with guns drawn, and being informed that Robinson had just left, went back down the hall and asked Robinson to identify himself. He did. Robinson had remained where he was, even though he could have entered the elevator without passing the policemen while they talked to the Moores.

[fol. 285] The shooting occurred, and the trial was held, in 1959. The State introduced the record of Robinson's discharge from a mental hospital in 1951, a stipulation of an adjudication in 1953 that he was sane, and a stipulation that the director of the court's Behavior Clinic would, if called, testify, on the basis of an examination two months before trial, that Robinson was able then to understand the charge against him and to cooperate with his counsel.

The morning of the second day of the trial the court was told by Robinson's attorney that they had hoped to have a doctor from the Psychiatric Institute testify that afternoon but had been unable to reach him. He said they were sure the doctor could be called the next morning, but the court, when no assurance was given that the doctor had been subpoenaed, refused to continue the case until the next morning in order to hear the doctor's testimony.⁵ The trial concluded that afternoon without the

⁵ The Court: Did you subpoena him?

Mr. McDermid: I understand that it was done but I am not really sure.

The Court: If you subpoenaed him, I will issue an attachment. If you did not subpoena him, we cannot delay the trial. You must prepare your lawsuit before you go to trial. You are on trial now for two days. Other cases are waiting. We have to proceed. If you subpoenaed him, prepare a petition and I will send for him. If you did not subpoena him it is unfortunate.

doctor's testimony and without an expert witness called for or against Robinson.

After the verdict and sentence to life imprisonment, one of Robinson's attorneys stated that he had made two or three dozen calls to psychiatrists, that he had contacted the Illinois Psychiatric Society and its officers, and that he had asked a private psychiatrist for assistance—all to no avail. He stated that he did not believe in subpoenaing a psychiatrist to testify when he did not know if the particular doctor would be cooperative.

The trial court made no express finding that Robinson was sane at the time of the alleged murder, but that finding is implicit in the judgment of guilt. The Illinois Supreme Court on appeal held, however, that the evidence at the trial failed to raise a reasonable doubt as to Robinson's sanity, since most of the incidents related by the witnesses occurred several years prior to the fatal shooting and there was no evidence that Robinson's mental illness was "of a permanent and continuing nature." *People v. Robinson*, 22 Ill. 2d 162, 169, 174 N.E.2d 820 (1961).

But that court, in its opinion, made no mention of the hasty trial of this capital charge with the denial of a reasonable opportunity to Robinson to obtain psychiatric testimony which could have had substantial bearing upon the very question of Robinson's "permanent and continuing" mental state. Presumably the Illinois Supreme Court saw little importance in the testimony of Robinson's mother of her unsuccessful attempts to have the police arrest her son so that he could be confined in 1958, or in the testimony concerning Robinson's eccentric behavior in committing the alleged murder. The mother's attempt to have Robinson committed the year before that homicide and his odd antics in the homicide were five and six years after the adjudication of sanity. Finally, although the Illinois Supreme Court did consider the claim of Robinson that he was denied the right to compulsory process to obtain as witnesses Mr. and Mrs. Moore, outside of whose apartment Robinson was arrested the day after the homicide, the court, among other things, stated that no showing had

been made that the witnesses sought were material. It could be that their observation of Robinson the day following the homicide was material to the question of his insanity the previous night.

We turn now to the question of Robinson's competency to stand trial.

Due process requires that a person be not convicted of a crime while he is insane. *People v. Robinson*, 22 Ill. 2d 162, 174 N.E.2d 820 (1961). And the denial of a reasonable request to obtain the services of a necessary psychiatric witness is effectually a suppression of evidence violating the fundamental right of due process. See *United States v. Ogilvie*, 334 F.2d 837, 843 (7th Cir. 1964). Neither Robinson nor his attorneys moved for an inquiry into defendant's sanity at the time of trial. In Illinois, however, the trial judge is required, whenever a bona fide doubt is raised as to the defendant's sanity at the time of the trial, to impanel a jury and conduct a sanity hearing. *People v. Lego*, — Ill. 2d —, 203 N.E.2d 875 (1965); *People v. Robinson*, p. 167. This procedure satisfies the requirement of due process; to deny the established procedure to a particular accused, however, is a denial of due process. *Thomas v. Cunningham*, 313 F.2d 934, 938 (4th Cir. 1963).

As we have indicated, Robinson did not testify in his behalf, and the testimony with respect to his sanity came from relatives and friends. The opinion of these witnesses was that Robinson did not know the difference between right and wrong. We have discussed at length their testimony hereinabove. The only evidence introduced for the prosecution specifically on the question of Robinson's competency to stand trial was a stipulation at the end of Robinson's case that if called, Dr. Haines, the director of the Behavior Clinic of the Criminal Court of Cook County, would testify that he examined Robinson about two months prior to trial and that in his opinion Robinson was at that time able to understand the nature of the charges against him and to cooperate with counsel. The Assistant State's Attorney sought a broader stipulation from defense counsel. Failing in this, he told the court,

Now the defense raised here is such that I think we should have Dr. Haines' testimony as to his opinion whether this man is sane or insane. It is possible that the man might be insane and know the nature of the charge or be able to cooperate with his counsel. I think it should be in evidence, your honor, that Dr. Haines' opinion is this defendant was sane when he was examined.

The trial court stated that the doctor's testimony was not needed, since there was already enough in the record.

There was no express finding by the trial court that defendant was competent to stand trial. There is only our inference, of that finding, drawable from the judgment of guilt and from the trial court's statement referring to the State's Attorney's suggestion that the director of the Behavior Clinic should be called as a witness, that "You have enough in the record now. I don't think you need Dr. Haines."

Denial of a reasonable opportunity to obtain psychiatric testimony for Robinson could also have weighed heavily on the question of his competency to stand trial. The case closed with no psychiatric witness called to give testimony [fol. 288] either on the defense of insanity or on Robinson's competence to stand trial. We have pointed out that denial of a fair opportunity to obtain necessary testimony is effectually to suppress it. See *United States v. Ogilvie*, 334 F.2d 837, 843 (7th Cir. 1964). The Illinois Supreme Court thought no facts were brought to the trial court's attention to raise a doubt of defendant's sanity requiring an inquiry; that the "traits, conduct and crimes" of Robinson were not proved to be "true manifestations of insanity"; that the conclusions of the defense witnesses were based on incidents many years before the trial, having little relevancy at the time of trial; that the court was aware of Robinson's confinement eight years earlier, and of the records of his condition and discharge and of his adjudication of sanity six years before the trial; and that the court had before it the stipulation concerning Dr. Haines, the director of the Behavior Clinic, as well as

Robinson's display at the trial of his ability to rationally assist in the conduct of his defense.

We point out again that the only likely means Robinson had to prove that his "traits, conduct and crimes" were "true manifestations" of insanity was the psychiatric testimony he was denied a reasonable opportunity to obtain; and again we note his mother's testimony of her unsuccessful attempt in 1958 to have the police arrest her son for confinement because of his irrational conduct at the time and the testimony of his erratic conduct in committing the homicide, both of which events occurred after the adjudication of sanity.

We are mindful of the admonitions to district courts in *Townsend v. Sain*, 372 U.S. at 318, with respect to "their delicate role in the maintenance of proper federal-state relations." But the district court is reminded in *Townsend* of its power to "try the facts anew," 372 U.S. at 312, where an applicant in habeas alleges facts which, if proved, would entitle him to relief, and of the duty to exercise that power in a federal evidentiary hearing "unless the state court trier of facts has, after a full hearing, reliably found the relevant facts." 372 U.S. at 313.

Robinson's petition, and the record, present a substantial question of denial of his Sixth Amendment right to compulsory process^o for witnesses in his behalf. At the [fol. 289] commencement of the defendant's case Robinson protested that his attorneys had failed to subpoena two witnesses as he had instructed them. One of the attorneys stated to the court that he did not remember any such instruction. When Robinson was asked what the witnesses would testify to he replied that he did not know, but that he wanted them subpoenaed. The court stated that "We can't subpoena people unless you tell us what they are going to testify to."

The witnesses Robinson wanted called were Mr. and Mrs. Robert Moore. Prior testimony had disclosed that

^o U.S. Const. amend. VI.

"In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor"

Robinson was present in their apartment the day after the shooting and that they had caused, and witnessed, his arrest. Hearsay testimony of their statements at the time of the arrest had been admitted into evidence without objection.

Following the announcement of the verdict and sentence, one of Robinson's attorneys stated that following Robinson's request during the trial for subpoenas he had talked to the Moores and determined that their testimony would not be helpful. He stated that Robinson was told of this and agreed that they should not be called.

In the wake of *Gideon v. Wainwright*, 372 U.S. 335 (1963), holding that the Sixth Amendment right to counsel is embraced in the Fourteenth Amendment to protect that right against state action,⁷ it follows that the right of compulsory process must similarly be included in the Fourteenth Amendment protection.⁸ This right is as "implicit [fol. 290] in the concept of ordered liberty"⁹ as the right to counsel. In many cases unless a defendant had the opportunity to compel witnesses to appear in his behalf, the right to counsel would be meaningless. Unreasonable denial of a continuance to afford the defendant a timely opportunity to obtain witnesses by compulsory process was held to be a violation of this constitutional right in *Paoni v. United States*, 281 Fed. 801 (3rd Cir. 1922). And this basic

⁷ Since this opinion was submitted the Supreme Court has decided in *Pointer v. Texas*, 33 U.S.L. Week 4306 (April 5, 1965) that a defendant's Sixth Amendment right to be confronted with the witnesses against him, and to cross-examine them, is applicable to the states by virtue of the Fourteenth Amendment. ("We hold today that the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment.") There is good reason to anticipate that before long the right to compulsory process for obtaining witnesses in his favor will likewise be made applicable to the states by the Supreme Court.

⁸ See *MacKenna v. Ellis*, 263 F.2d 35 (5th Cir.), cert. denied 360 U.S. 935 (1959); *MacKenna v. Ellis*, 280 F.2d 592 (5th Cir. 1960), modified on rehearing en banc 289 F.2d 928 (5th Cir.), cert. denied 368 U.S. 877 (1961).

⁹ *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

right to process can be understandingly waived only by a defendant, not by his attorney. Cf. *Fay v. Noia*, 372 U.S. 391, 439 (1963).

If, as alleged by Robinson, he immediately upon learning that his attorneys had failed to subpoena Mr. and Mrs. Moore as he had instructed them, requested that they be subpoenaed, and if he did not later understandingly abandon his desire to have them called, then his constitutional right was violated. It was not necessary for him, as the state court seems to have thought, as a prerequisite to the exercise of this right to be able to tell the court what testimony he expected from the witnesses. Without any specification by Robinson, the relationship of the Moores to the case should have been apparent from the testimony concerning Robinson's arrest. They saw Robinson the day after the homicide and could have given testimony of their observation of him, on the question of his insanity at the time.

A review of the record of the state trial persuades us that Robinson was convicted of murder and sentenced to life imprisonment in an unduly hurried trial without a fair opportunity to obtain necessary expert psychiatric testimony in his behalf, without sufficient development of facts on the issues of insanity at the time of the homicide and at the trial, and upon a record which does not show that the state court "after a full hearing reliably found the relevant facts."

We think our consideration and disposition of the foregoing questions compel the conclusion that the district court erred in not requiring a return to be filed by respondent to Robinson's petition. Under the mandatory [fol. 291] provisions of 28 U. S. C. § 2243¹⁰ a return is required unless the petition is patently frivolous or obviously without merit. *Brooke v. Anderson*, 317 F.2d 179 (D.C. Cir. 1963); *Higgins v. Steele*, 195 F.2d 366 (8th Cir. 1952).

¹⁰ "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto."

We hold that an evidentiary hearing was mandatory. The cause will be remanded for that purpose.

The cause is remanded to the district court with directions to appoint counsel for Robinson; to require the respondent to file a return; to proceed with a determination of the question whether, when Robinson committed the alleged murder in 1959, he was sane; and to provide a fair opportunity for appointed counsel—with whatever aid the district court can provide him—to obtain expert witnesses to testify on the question. If Robinson is found by the court to have been insane at the time in question he should be ordered released from custody of the respondent; such release should, however, be delayed for a reasonable time to be set by the district court for an opportunity by the appropriate State authorities to examine into Robinson's present mental health.

The district court should also determine upon the hearing whether Robinson was denied due process by reason of failure of the trial court on its own motion to impanel a jury and conduct a sanity hearing upon his competence to stand trial. If the court finds that Robinson's federal constitutional rights were violated in that respect, he should be ordered released, but such release may be delayed for a reasonable time to be set by the district court to permit the State of Illinois to grant Robinson a new trial.

Mr. John C. Tucker, of Chicago, Illinois, was appointed by this court to represent petitioner on this appeal. We thank him for his able and devoted efforts on behalf of his client.

[fol. 292] SCHNACKENBERG, Circuit Judge, specially concurring.

I approve and concur in Judge Kiley's opinion, with the exception of that part dealing with Robinson's right to compulsory process for witnesses in his behalf, based on the Sixth Amendment. I believe that the supposed difference of opinion between Robinson and his attorneys as to whether these witnesses should be called or not, does not afford a basis for a charge of a violation of his constitutional rights.

KNOCH, Circuit Judge (dissenting). Regretfully, I find myself in disagreement with the opinion of the majority.

As the Illinois Supreme Court noted in its opinion on defendant's writ of error proceeding, neither defendant nor his counsel requested a sanity hearing. Granted that it was the duty of the Trial Judge to impanel a jury to determine the issue if the facts brought to the Court's attention or the personal observations of the Trial Judge raised a bona fide doubt of defendant's sanity. Here the Trial Judge, who was advised of the facts of the defendant's past medical history, had more than the usual opportunity to evaluate the defendant's demeanor in Court because of the several colloquys between the defendant and the Judge. Manifestly the Trial Judge experienced no bona fide doubt as to defendant's sanity. Lacking his unique advantages for such observation, it seems to me somewhat presumptuous for this Court, or the District Court, to say that he ought to have entertained such doubts.

As to denial of continuance to subpoena two additional witnesses, whom defendant's counsel had not seen fit to call, it seems only fair to me that the Trial Court be given some inkling of the nature of their anticipated testimony to justify the continuance sought mid trial.

[fol. 293] I would affirm the decision of the District Court. In my opinion the Illinois Supreme Court has adequately dealt with the issue raised here and its decision should not be disturbed.

[fol. 294]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES, ex rel, THEODORE ROBINSON,
Petitioner-Appellant,

No. 14253

vs.

FRANK J. PATE, Warden, Respondent-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

JUDGMENT—May 3, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and it is hereby, Remanded to the said District Court in accordance with the opinion of this Court filed this day.

[fol. 296] Clerk's Certificate to foregoing Transcript (omitted in printing).

[fol. 297]

SUPREME COURT OF THE UNITED STATES

No. 382, October Term, 1965

FRANK J. PATE, Warden, Petitioner,

v.

THEODORE ROBINSON.

ORDER ALLOWING CERTIORARI—October 25, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The parties are requested to brief and argue, in addition to the questions presented, the question whether any of the further proceedings contemplated in the opinion of the Court of Appeals should be conducted in the appropriate Illinois courts rather than in the District Court.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.